

1980 WL 120686 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 27, 1980

*1 The Honorable Miller S. Ingram
Chairman
South Carolina Alcoholic Beverage Control Commission
1205 Pendleton Street
Columbia, South Carolina

Dear Chairman Ingram:

You have asked this Office for advice on how to proceed when your son appears as an attorney for a party before the South Carolina Alcoholic Beverage Control Commission. Although there appears to be no statute or regulation which governs this situation,¹ the Code of Judicial Conduct [S.Ct. Rule 33] lends some guidance. Canon 3C(1) provides that
A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where: . . .

- (a) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person: . . .
- (ii) is acting as a lawyer in the proceedings . . .

Your son comes within the third degree of relationship.²

The South Carolina Alcoholic Beverage Control Commission is a quasi-judicial body, and is called upon to conduct hearings and function in a judicial manner. See, [Brown v. Debruhl](#), 468 F.Supp. 513, (SC 1979), and a litigant appearing before the Commission is entitled to a decision rendered by a fair and impartial tribunal. [Friedman v. Rogers](#), 47 U.S.L.W. 4151.

The New Jersey Court in [Kramer v. City of Plainfield](#), (N.J.), 244 A.2d 335, faced a similar situation [lawyer-relative appearing before quasi-judicial hearing officer]. The Court recognized the absence of a controlling statute and relied instead upon the Canons of Judicial Conduct noting that:

[w]hile the authorities cited apply specifically only to judges, there is no sound reason why a lesser standard should govern the conduct of those acting in a quasi-judicial capacity. The need for unquestionable integrity, objectivity and impartiality is just as great for quasi-judicial personnel as for judges.

A similar conclusion was reached by the American Bar Association's Committee on Ethics and Professional Responsibility in Informal Decision C-449. There the Committee stated that the rules of judicial conduct governing disqualification should be equally applicable to a quasi-judicial officer. [See attached].

In addition, disqualification of one Commission member does not preclude the remaining members of the Alcoholic Beverage Control Commission from lawfully conducting the proceeding and rendering a decision. See § 61-3-110, CODE OF LAW OF SOUTH CAROLINA, 1976, as amended.

You have further asked whether you should disqualify yourself from any proceeding before the Commission if a member of the law firm of your son's association is representing a party. The commentary to Canon 3(c)(1)(d)(ii) explains that disqualification is not generally required in that circumstance.

While it is not clear that the Canons of Judicial Conduct are mandatory in your situation, it would be advisable to follow the guidelines set forth in Canon 3c(1)(d).

Very truly yours,

*2 Edwin E. Evans

Assistant Attorney General

Footnotes

- 1 There is no requirement in §§ 8-1-10 *et seq.*, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended ['State Ethics Act'] that an administrative officer disqualify himself in this situation, unless the son resides in the same household as the official. Section 8-13-460.
- 2 Despite the family relation, Canon 3D permits a judge to hear a matter if all parties agree in writing.

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