

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

November 21, 1977

On November 11, 1977, you requested an opinion of the Judicial Inquiry Commission concerning whether the grounds of disqualification from hearing specific cases applicable to circuit judges are also applicable to part-time judges.

The answer to your question is provided in the Compliance provision of the Alabama Canons of Judicial Ethics, which provision states that:

“A. ... (a) part-time judge:

(1) Is not required to comply with Canon 5D, E, F, and G, and Canon 6C;

(2) Should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.”

Canon 3C is the canon concerning disqualification. Part-time judges therefore are, under the Canons, subject to the same grounds of disqualification from hearing specific cases as are circuit judges. Further, you should note the additional disqualification in the above cited provision prohibiting part-time judges from acting as lawyers in certain cases.

Relative to your general question concerning the application of Canon 3C to municipal judges, you address several questions to this Commission regarding disqualification in specific types of cases. These questions are paraphrased as follows:

Can a municipal judge hear a case where:

(1) A person he represents or has represented as an attorney on an occasional or retainer basis is either prosecuting witness or defendant?

(2) He represents a woman in a divorce proceeding and she takes a warrant in municipal court against her husband for assault and battery, etc.?

(3) He has represented a defendant who is convicted and placed on probation by order of a circuit or district court and said defendant appears before the municipal court on a charge which upon conviction would jeopardize his probation.

(4) Where a conviction by a plea of guilt or otherwise for an offense such as Driving While Intoxicated would probably or possibly be introduced as evidence in a circuit or district court case in which the municipal judge is or might be involved as an attorney.

Answers to your questions (1) and (3) would of course depend upon whether a Canon 3C ground for disqualification is found to be present after a full consideration of all the facts and circumstances surrounding the attorney-client relationship and the nature of the case pending in municipal court. In answer to your question (2) it would appear that the municipal judge should disqualify himself. Canon 3C does not require that a judge disqualify himself in the situation presented in your question (4) as stated above. However, note subsection two of the above quoted portion of the Compliance section of the canons which would disqualify the judge as acting as a lawyer in any matter related to the Driving While Intoxicated proceedings.

If we can be of help to you in the future, please let us hear from you.

Very truly yours,

JUDICIAL INQUIRY COMMISSION