

Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge is disqualified from sitting in a certain proceeding under specified circumstances.

The circumstances are as follows: Plaintiff sued defendant to enjoin defendant's operation of a well on defendant's property alleging that defendant's operation of the well caused loss of water to a rural water authority. Plaintiffs won an injunction against defendant's operation of the well. Subsequently, plaintiffs brought an action against defendant seeking to hold defendant in contempt and to recover monetary damages. Defendant will add as parties both the rural water authority, which maintains the pumps and buys water from defendant.

Further, pertinent facts from the judge are that if the rural water authority cannot buy water from defendant, it will have to purchase water from a nearby city. While in private practice, the judge assigned to sit in these proceedings was for a short period of time the attorney for the utility and water board of the nearby city.

The question then presented to the Commission is whether a judge should recuse himself in a proceeding in which the outcome of the proceeding would have an effect upon the judge's former client, who is not a party to the proceeding.

A judge's disqualification is governed in large part by Canon 3C of the Alabama Canons of Judicial Ethics. It is the opinion of the Commission that the mere fact that the judge's former client may be affected by the outcome of the proceeding does not cause the judge to be disqualified.

However, the Commission draws a distinction between disqualification and recusal. Disqualification is covered by the above-cited canon. The canon requires automatic disqualification under specific circumstances. This does not, however, mean that a judge cannot recuse himself from sitting when he feels or believes the circumstances warrant such an act on his part. Thus, a judge may recuse himself from sitting in a proceeding even though no automatic disqualification exists.

Yours very truly,

JUDICIAL INQUIRY COMMISSION