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Judicial Inquiry Commission

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August 27, 1984

The Judicial Inquiry Commission has considered your request for an opinion concerning the following questions:

(1) Is a judge disqualified to preside in a case wherein a parties' counsel was judge's political opponent in a prior judicial race? If so, for what period of time is the judge disqualified?

(2) Is a judge disqualified from presiding in a case wherein a parties' counsel was an adverse witness to judge in disciplinary action against the judge? If so, how long does the disqualification continue?

(3) What procedure should be followed in the State of Alabama under the Canons of Ethics to bring in question a judge's disqualification to preside over a case? Is the judge presumed to know all facts that might have a bearing on his disqualification to preside? Does the questioning party have a duty to bring to the judge's attention these matters? If the judge is unaware of any disqualifying interest or appearance that might subject his impartiality to question, and the matter is not brought to his attention by an aggrieved party, is it unethical for him to preside over the case?

As you know, disqualification of a judge is governed by Canon 3C of the Alabama Canons of Judicial Ethics. The Canons are designed for the purpose of preventing not only partiality by judges but also the appearance of partiality. Canon 3C provides in pertinent part that a judge is disqualified from sitting in any proceeding in which his impartiality might reasonably be questioned. Disqualification specifically occurs where the judge has a personal bias or prejudice concerning a party.

As to your first question, it is the opinion of the Commission that the mere fact that a party to a proceeding is represented by the defeated opponent of the judge for judicial office does not require the judge's disqualification. However, if facts and circumstances exist arising out of the campaign, which cause the judge to harbor a personal bias or prejudice toward the clients of the attorney because of his representation, or if other facts or circumstances exist which cause the judge's impartiality to be reasonably questioned, then the judge may be disqualified.

As to your second question, it is the opinion of the Commission that the mere fact that an attorney for a party to a proceeding is represented by an attorney, who testified

against a judge in a judicial disciplinary proceeding, does not necessarily cause the judge's disqualification. However, when considered with additional facts and circumstances surrounding the testimony, the disciplinary proceeding as well as the judge's conduct toward that attorney could cause the judge's disqualification. The Commission cannot be more specific in its answer without more specific facts.

[PARAGRAPH OMITTED BECAUSE OF SPECIFIC PERSONAL REFERENCE]

In response to your third question, the Canons set out a procedure for the remittitur of disqualification in Canon 3D. However, no specific procedure is set out for either raising or determining disqualification under Canon 3C. Indeed, the Canon provides simply that under certain circumstances a judge is disqualified. Of course, if a disqualifying interest or factor exists, it is unethical for a judge to fail to disqualify himself irrespective of whether the disqualifying interest is either known to or raised by the parties. The burden is upon the judge. It is the spirit as well as the letter of the Canons which must be followed by all judges at all times.

Very truly yours,

JUDICIAL INQUIRY COMMISSION