

## Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET  
SUITE 201  
MONTGOMERY, ALABAMA 36104

September 29, 1986

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge is disqualified from sitting in a criminal proceeding where the defendant has filed suit against the judge in federal court under 42 U.S.C. 1983 seeking monetary damages against the judge. Additional facts show that while the federal action is still pending, the federal magistrate has recommended that the suit against the judge be dismissed as frivolous.

As you are aware, judicial disqualification is governed by Canon 3C of the Alabama Canons of Judicial Ethics. In pertinent part, Canon 3C(l) provides:

“A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

(a) He has a personal bias or prejudice concerning a party ...”

Further, in advisory opinion 83-176 this Commission advised that the mere filing of an action under 42 U.S.C. 1983 against a judge by a litigant appearing before a judge did not cause the disqualification of the judge in the pending proceeding.

It is the opinion of the Commission that the principles applied in advisory opinion 83-176 are equally applicable here. It is axiomatic that a litigant cannot control pending litigation by the mere filing of a 42 U.S.C. 1983 action against the trial judge. To base disqualification on the mere filing of such an action would create chaos in the judicial system and could prevent cases from ever being tried. Thus, each case of this nature must be considered on its own merits and in those instances where, as in this instance, it is easily determined from the face of the pleadings that the 42 U.S.C. 1983 action is completely frivolous, the mere filing of the action does not disqualify the trial court judge.

Sincerely,

JUDICIAL INQUIRY COMMISSION