

## Judicial Inquiry Commission

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August 2, 1988

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 certain proceeding. Under the facts stated the judge is named a party defendant in his official capacity only in a lawsuit pending in federal court. The lawsuit challenges the process by which circuit judges are elected and potentially could affect the terms of every circuit judge in the state. The judge in question is a justice on the Alabama Supreme Court. The issues presented for resolution by the Commission concern the judge's disqualification in proceedings where the federal court attorneys for the judge, the plaintiffs or the firm of either represents a party to the proceeding.

It is the opinion of the Commission that pending the resolution of the federal litigation the judge is disqualified from sitting in any proceeding in which either of the judge's attorneys or the plaintiffs' attorneys represents a party. This disqualification does not extend to proceedings where other members of the firms of the disqualifying attorneys represents a party. Our opinion is based on our prior opinions, applicable case law, and the provisions of Canon 3C(l) of the Alabama Canons of Judicial Ethics.

Canon 3C(l) provides in pertinent part:

"A judge should disqualify himself in a proceeding in which ... his impartiality might reasonably be questioned ..."

In at least three prior opinions this Commission has found that this Canon prohibits a judge from sitting in a proceeding in which an attorney for one of the parties represents the judge in an unrelated matter in either the judge's individual or fiduciary capacity. See Advisory Opinions 80-74, 82-168 and 87-313. We believe that Canon 3C(l) applies equally where the attorney represents the judge in his official capacity.

Our Supreme Court in In Re Sheffield, 465 So. 2d 315 (Ala. 1984) applied this Canon in a judicial disciplinary proceeding. The Court found that the standard for applying Canon 3C(l) is whether a reasonable man knowing the facts would question the judge's impartiality. We believe that in this instance a "reasonable man" might question the judge's impartiality where the attorney for one of the parties either represents the judge or has sued the judge in his official capacity in an unrelated pending judicial proceeding. This is especially true where the unrelated proceeding challenges the method by which all circuit judges are elected and the judge in

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question is the chief administrative officer of the court system and as such directs the attorney's actions in the unrelated matter.

Very truly yours,

JUDICIAL INQUIRY COMMISSION