

Judicial Inquiry Commission

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May 23, 1989

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a disqualifying conflict exists in a judge hearing a divorce case and a harassment case filed by the wife in the divorce case against the husband and a third party or a harassment case filed by the third party against the wife.

It is the opinion of the Commission that a judge is not disqualified from sitting in all three of the above-described cases. Disqualification is governed primarily by Canon 3C of the Alabama Canons of Judicial Ethics. That Canon requires disqualification where the judge's:

“... disqualification is required by law or his impartiality might reasonably be questioned ...”

The Canon then sets out some specific instances in which disqualification is required. We note that each specific instance cited in the Canon requires some personal interest (either real or perceived) of the judge or a member of his family. The Canon does not require disqualification where a judge's familiarity with one case is derived from his having tried another case or from another judicial experience. Our courts have held that this type of “judicial bias” does not require disqualification. Whisenant v. State, 482 So.2d 1225, 1237 (Ala. Cr. App. 1982) aff'd in relevant part, 482 So. 2d 1241, 1245 (Ala. 1983). Further, our Supreme Court has noted that disqualifying bias or prejudice must arise from an extra-judicial source. Hartment v. Board of Trustees, 436 So.2d 837 (1983). Knowledge gained from the trial of one case therefore, of itself, does not disqualify a judge from hearing another case involving the same parties. In the fact situation given, the judge is not precluded from sitting in any of the three cases.

Sincerely,

JUDICIAL INQUIRY COMMISSION