

Judicial Inquiry Commission

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September 27, 1990

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. The proceeding is a matter involving the custody of a child. One of the parties to the proceeding has filed a lawsuit in federal court against the State of Alabama and certain local Departments of Human Resources concerning their participation in the custody of the child in question. The state trial judge entered a Temporary Order leaving the custody of the child in the Department of Human Resources. The judge then received a copy of a pro se "Motion to Add Defendants" which had been filed in the pending federal lawsuit after his temporary order had been entered in the state proceedings. The "Motion to Add Defendants" was filed by one of the child custody litigants and seeks to add both the state trial judge and the Unified Judicial System as parties defendant in the federal proceedings. The question before the Commission is whether under these facts the state trial judge is disqualified.

Judicial disqualification is governed primarily by Canon 3C of the Alabama Canons of Judicial Ethics. In pertinent part, that Canon provides:

"A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned ..."

In applying this provision, the Commission has found that the mere filing of a lawsuit against a judge by a litigant where the lawsuit against the judge is based on the judge's actions in a pending matter is insufficient to cause the judge's disqualification. See Advisory Opinions 77-29, 83-176 and 86-273. To hold otherwise would allow a litigant to control the selection of his trial court judge by challenging the state trial judge's judicial actions in a federal forum. Thus, to base disqualification on such actions by litigants could cause orderly court processes to become chaotic. The Commission hereby reaffirms its prior finding that the mere filing of a lawsuit by a litigant before a judge does not cause the judge's disqualification.

However, other facts and circumstances might exist which could cause disqualification. For instance, should the litigant's actions cause the judge to develop an actual "personal bias or prejudice" toward the litigant, disqualification would be required.

Sincerely,
JUDICIAL INQUIRY COMMISSION