

Judicial Inquiry Commission

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April 29, 1991

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge is disqualified in sitting in a certain proceeding. Under the facts presented the matter, a divorce, had been pending on the judge's docket for almost a year when the judge first saw the litigants. Upon seeing the litigants, the judge recognized one of the litigants as possibly being the defendant in a child support action prosecuted years earlier by the judge as assistant district attorney. On the day the judge first saw the present litigants, the case was set for a hearing and one of the litigants had traveled some distance from Georgia to Alabama for the hearing. The judge informed the lawyers and the litigants of his possible past relationship to one of the parties. Both parties and their attorneys insisted that the judge hear the case and so consented in writing. The judge then began to hear the matter which settled by agreement of the parties prior to the completion of the hearing.

It is the opinion of the Commission that no violation of the Canons of Judicial Ethics has occurred based on the foregoing circumstances. This matter is closely akin to that considered by the Commission in Advisory Opinion 89-352. There, the Commission concluded that while a prior adversarial relationship between a litigant and the judge in a related matter might cause the judge's disqualification, disqualification does not occur when the relationship is remote in time, the parties insist upon the judge hearing the matter and the parties so consent in writing. Here there is the additional factor that the judge is not positive that the litigant participated in the prior matter.

Thus, based on these circumstances and Advisory Opinion 89-352 and the authorities cited therein no violation of the Canons is present.

Sincerely,

JUDICIAL INQUIRY COMMISSION