

Judicial Inquiry Commission

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February 28, 1992

This is in response to your written and oral request for an advisory opinion from the Judicial Inquiry Commission concerning whether you are disqualified under the following circumstances:

Various political candidates for elected public office have brought a civil suit against certain media and broadcasting companies alleging that the candidates were overcharged for broadcast advertising time. This action involves contracts between the plaintiff political candidates and the defendant media and broadcasting companies. The chief justice and one associate justice of the Alabama Supreme Court have been allowed to intervene as plaintiffs in this action. The defendants have raised the issue of your recusal as the circuit court judge presiding over this case, but have not filed a motion to recuse.

There is no allegation of personal bias or prejudice. You were not a candidate for any political office during any of the elections involved in this matter, did not purchase any advertising time which could possibly be involved in this civil action, and have not entered into a contract with any of the defendant companies.

The basis for the defendants' argument that your recusal might be required is found in the following statement: "The issue of recusal is raised by the broad supervisory and other powers exercised over lower courts in the Alabama court system by the Supreme Court of Alabama and the Chief Justice in his capacity as head of the Administrative Office of Courts as well as the potential interest this Court may have by virtue of your status as a past and future political candidate and the possible need to purchase broadcast advertising time."

It is the opinion of the Judicial Inquiry Commission that there is no basis for your recusal under these circumstances. "[T]he causes for disqualification of a judge are those affecting: (1) his individual rights, (2) his direct pecuniary interest, and (3) any interest the probable and natural tendency of which is to create bias in the mind of the judge for or against a party to a suit. Moulton v. Byrd, 224 Ala. 403, 140 So. 384 (1932)." Williams v. Faucett, 579 So.2d 572, 579 (Ala. 1989). None of these causes is present under the facts presented.

The Commission finds no violations of any of the provisions of Canon 3 C of the Alabama Canons of Judicial Ethics. The possibility that you might purchase advertising time in the future as a part of a political campaign and might somehow benefit from any decision in this case is too speculative and remote a contingency upon which to base a ground of recusal. “[T]o disqualify a judge, his interest in the subject matter of the litigation, must be direct, real, and certain, and not one which is merely incidental, remote, contingent, or possible, speculative, unreal, or merely theoretical.” 48A C.J.S. Judges § 120(c) (1981). See also In re Beard, 811 F.2d 818, 830 (4th Cir. 1987).

The civil case in this matter involves alleged breaches of contracts and associated conduct which have already occurred. This Commission is of the view that under these circumstances “a person of ordinary prudence in the judge’s position knowing all of the facts known to the judge [would not] find that there is a reasonable basis for questioning the judge’s impartiality.” Bryars v. Bryars, 485 So.2d 1187, 1189 (Ala.Civ.App. 1986). See also, Henderson v. G & G Corporation, 582 So.2d 529, 530 (Ala. 1991); Humphries v. Lynch, 579 So.2d 612, 616 (Ala. 1991); Matter of Sheffield, 465 So.2d 350 (Ala. 1984).

The suggestion that you are disqualified because the chief justice and an associate justice of the Alabama Supreme Court are plaintiffs in the case and because of the broad supervisory and administrative powers possessed by the chief justice and the Supreme Court is without merit. If this contention were accepted, then every other judge in Alabama who was not a justice on the Supreme Court would be disqualified any time any member of the Supreme Court was involved in a civil suit. If such were true, then the “rule of necessity” would apply. “If no judge can be found who possesses the requisite degree of impartiality in regard to a particular case, the rule of necessity dictates that the original judge assigned to the case need not be disqualified despite his or her partiality.” J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics § 5.03 (1990). Furthermore, the chief justice and the associate justice are disqualified under Canon 3 C(l)(c) (financial interest in the subject matter in controversy) from participating in any review of this case should the decision of the circuit court be appealed.

Finally, the Commission finds that a review of all the circumstances of this case does not generate any appearance of impropriety which would be in violation of Canon 2. See Parrish v. Board of Commissioners of the Alabama State Bar, 542 F.2d 98, 103 (5th Cir. 1975).

Under the facts you have provided, the Commission finds no basis for your disqualification.

Respectfully,