

Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question concerns whether or not you are disqualified under the following circumstances.

You are the presiding judge in a class action law suit in which the plaintiffs have alleged that the erosion of their beach-front property has been caused by jetties constructed by the defendants. Among the named party defendants is the Alabama Highway Department. In this case you entered an order against the Department directing that Department to remove the jetties and to take other remedial action. After you denied the Department's motion to reconsider that order, the Department filed a notice of appeal to the Supreme Court of Alabama and also filed an action in federal court seeking a declaratory judgment. There are other claims pending in this case which will involve the enforcement of your order.

It is the opinion of the Judicial Inquiry Commission that you are not disqualified under these circumstances. In fact, unless the actions of the Highway Department in appealing and contesting your order have generated in you a personal bias and prejudice against the Department, you have a duty to continue to preside over the case pursuant to Canon 3.

The above factual situation is governed by Canon 3C of the Alabama Canons of Judicial Ethics. The pertinent portion of that canon provides:

"C. DISQUALIFICATION:

- (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:
 - (a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings."

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. Advisory Opinions 90-403, 86-273, 83-176, and 77-29. See also Advisory Opinions 89-383 and 89-377.

“Adverse rulings during the course of proceedings are not by themselves sufficient to establish bias and prejudice on the part of a judge.” Henderson v. G & G Corporation, 582 So.2d 529, 530-531 (Ala. 1991).

“Ordinarily, a judge’s ruling in the same or a related case may not serve as the basis for a recusal motion. Jaffe v. Grant, 793 F.2d 1182, 1189 (11th Cir. 1986), cert. denied, 480 U.S. 931, 107 S.Ct. 1566, 94 L.Ed.2d 759 (1987). The judge’s bias must be personal and extrajudicial; it must derive from something other than that which the judge learned by participating in the case. Id. at 1188-1189. An exception to this general rule occurs when the movant demonstrates ‘pervasive bias and prejudice.’ Id., at 1189.”

McWhorter v. City of Birmingham, 906 F.2d 674, 678 (11th Cir. 1990).

“Significantly, the Code speaks of a personal bias or prejudice. The bias necessary to disqualify a judge should arise from an extrajudicial source, resulting in an opinion on the merits based on something other than what the judge learned from participating in the case.

“[A]dverse rulings during the course of the proceedings are not by themselves sufficient to establish bias and prejudice. Otherwise, judges would be forced to disqualify themselves anytime they disagreed with either party’s counsel, resulting in a mockery of the judicial system. A litigant’s fear that a judge may become or has become biased as a result of a prior adverse decision cannot be transformed into a reasonable basis upon which his partiality can be questioned.”

L. Abramson, Judicial Disqualification Under Canon 3 of the Code of Judicial Conduct 24, 31 (American Judicature Society, 2nd ed. 1992) (emphasis in original).

The answer to your question is supported by the Commission’s prior advisory opinions. See Advisory Opinion 89-385 (judge who presided over defendant’s trial may determine merits of post-conviction petition); Advisory Opinion 89-350 (judge who presided over original trial is not disqualified from presiding over retrial of capital murder case which was reversed on appeal); Advisory Opinions 84-203 and 83-188 (judge may preside over trial of criminal case where he previously issued either search or arrest warrant).

This advisory opinion has been approved by the Commission. Please do not hesitate to contact me if you have any questions concerning this or any other matter.