

Judicial Inquiry Commission

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August 21, 1992

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether you may continue to preside over a civil action in which a defendant has filed a “counterclaim/crossclaim” against you based on your granting a motion for partial summary judgment in favor of the plaintiffs. As presiding judge you will be required to rule on the “counterclaim/ crossclaim.”

It is the opinion of this Commission that you are not disqualified and your recusal is not required merely because of the facts you have provided.

“A lawsuit pending between a judge and a party may be good cause of recusation, but a party cannot disqualify a judge to sit in his case by bringing an action against him after the principal suit is commenced.’ Absent a showing that a judge in fact is influenced adversely as a result of a ‘collateral’ lawsuit, disqualification serves no purpose because the party would join any judge as a party who becomes connected with the original case. To permit wholesale disqualification in this situation would allow litigants to choose their judge by filing lawsuits against all judges not to their liking. Equally important, impugning the integrity of a judge should not lead to disqualification when based on nothing more than the speculation or conjecture of pleadings.”

L. Abramson, Judicial Disqualification Under Canon 3 of the Code of Judicial Conduct 36 (American Judicature Society, 2nd ed. 1992) (footnotes omitted).

In Advisory Opinion 92-449, this Commission held that a judge is not disqualified to continue presiding over a case simply because a defendant contests the judge’s order by appealing to the state supreme court and by seeking a declaratory judgment in federal court even though continuing with the case will require an enforcement of the contested order. The judge should recuse himself if the contest of his order generates a personal bias or prejudice in him against the appealing party.

“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)." Advisory Opinion 92-449.

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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.