

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 you are disqualified from presiding over a divorce case in Clarke County because you had a conversation with another judge about a related juvenile case from Mobile County.

The facts are as follows:

The major issues in the Clarke County divorce case over which you preside involve the custody of the parties' minor child and the visitation privileges relative to that child. This divorce case involves J.T.H. and his current wife.

A different circuit judge presided over a separate case in the Juvenile Court of Mobile County involving J.T.H., his former wife, and their child. In that case, J.T.H. had filed a motion to be allowed visitation.

In the Clarke County case, you determined that it would be in the best interest of the Clarke County minor child if both of the child's parents underwent psychological evaluation. Subsequently, you discovered that the judge in the Mobile County juvenile case had already ordered and scheduled a psychological evaluation of J.T.H. Arrangements were made with the Mobile juvenile court judge so that the Mobile Mental Health Center would perform psychological evaluations on both J.T.H. and his current wife and that those evaluations would include the issues in the Clarke County case in addition to those in the Mobile case. These arrangements were made, apparently without objection, due to the limited financial resources of both J.T.H. and his current wife. In making these arrangements with the Mobile Mental Health Center, the Mobile juvenile court judge found that "[h]aving these psychological [evaluations] reflect the issues of both cases would greatly reduce the psychological work required as the family history of both families will be required in both cases."

The Mobile judge entered an order in the Mobile case on February 5, 1993, denying J.T.H.'s motion for visitation privileges of his Mobile child and ordering him to pay child support to his former wife.

In the summer of 1993 you were attending a judicial conference where the Mobile juvenile court judge informed you that he had entered an order in the Mobile case. Subsequently, you obtained and read a copy of that order. You informed the attorneys for both parties in the Clarke County case that you had done so.

On August 26, 1993, J.T.H.'s attorney in the Clarke County case (who also represents him in the Mobile case) filed a motion for recusal alleging that the Mobile case was being appealed and that the "information provided by [the Mobile judge] is outside the scope and interest of the case before the Court." The basis of the motion to recuse is the conversation you had with the Mobile juvenile court judge and his order in the Mobile case.

A judge should disqualify him or herself in any proceeding in which the judge has a personal knowledge of disputed evidentiary facts concerning the proceeding. Rule 3C(l)(a), Alabama Rules of Judicial Conduct. "The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and must result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." United State v. Grinnell Corp., 384 U.S. 563, 583, 86 S.Ct. 1698, 1710, 16 L.Ed.2d 778, 793 (1966) (emphasis added). See also Kitchens v. Maye, [Ms. 1911255, June 25, 1993] ____ So.2d ____ (Ala. 1993).

"[Canon 3C] "does not require disqualification where a judge's familiarity with one case is derived from his having tried another case or from another judicial experience. Our courts have held that this type of 'judicial bias' does not require disqualification. Whisenant v. State, 482 So.2d 1225, 1237 (Ala.Cr.App. 1982) aff'd in relevant part, 482 So.2d 1241, 1245 (Ala. 1983). Further, our Supreme Court has noted that disqualifying bias or prejudice must arise from an extra-judicial source. Hartment v. Board of Trustees, 436 So.2d 837 (Ala. 1983)." Advisory Opinion 89-375.

"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." McWhorter v. City of Birmingham, 906 F.2d 674, 678 (11th Cir. 1990). "The interest that disqualifies a judge is a personal interest, not the interest that he has in dedicating himself to the task of doing his utmost to see that justice according to law is accomplished." Kittle v. State, 362 So.2d 1260, 1266 ((Ala.Cr.App. 1977), reversed on other grounds, 362 So.2d 1269 (Ala. 1978). See also McMurphy v. State, 455 So. 2d 924, 929 (Ala.Cr.App. 1984).

A judge is not required to recuse himself after reviewing a psychiatric evaluation of the defendant. Moore v. State, 488 So.2d 27, 31 (Ala.Cr.App. 1986). “[I]n a child custody proceeding, ... [i]n determining what is in the best interests [of the child], ‘the trial court should consider a variety of factors, including . . . the characteristics of those seeking custody, including age, character, stability, mental and physical health, and their respective home environments.’” Poe v. Capps, 599 So.2d 623, 625 (Ala.Civ.App. 1992).

The question of whether or not the order in the Mobile juvenile court case is admissible in evidence in the Clarke County case is a legal and not an ethical question. That question is beyond the jurisdiction of this Commission. The authority of this Commission to issue opinions extends only to opinions concerning the Canons of Judicial Ethics. Advisory Opinions 91-419, 81-102, 80-94. Furthermore, “[a]bsent bad faith (i.e., absent proof of malice, ill will, or improper motive), a judge may not be disciplined under Canons 2 A and 2 B of the Alabama Canons of Judicial Ethics for erroneous legal rulings.” In re Sheffield, 465 So.2d 350, 358 (Ala. 1984). See also Advisory Opinion 89-304.

Therefore, under the circumstances presented, it is the opinion of this Commission that you should disqualify yourself only if you obtained information of a disputed evidentiary fact from either your conversation with or the order of the Mobile County circuit court judge and that information will influence your opinion of the substantive merits of the case in Clarke County.

The Commission finds no basis for any allegation of ethical misconduct under the facts presented.

This advisory opinion has been considered by the Commission and is the opinion of the Judicial Inquiry Commission.