93-510

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 is whether you should disqualify yourself under the following facts.

You presided over the defendant's trial and sentencing. A civil action has been filed against the criminal defendant involving issues "substantially similar" to those involved in the criminal case. A church is one of the defendants in the civil case. Although not a member of that particular church, you occasionally attend services there and consider the pastor to be a friend. The church has a very large congregation.

A motion to recuse has been filed. That motion asserts two grounds of disqualification: 1) your integral involvement and knowledge of the criminal case, and 2) your personal acquaintance with some of the co-defendants.

Your question is governed by Canon 3C(l)(a), Alabama Canons of Judicial Ethics which states that a judge should disqualify himself in a proceeding where "[h]e has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding."

I

The fact that you presided over the defendant's criminal trial does not automatically disqualify you from presiding over a civil trial involving similar issues and the same defendant.

> "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).
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> "[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. Whisenhant 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).

"Knowledge gained from the trial of one case does not disqualify a judge from hearing another case involving the same parties." Advisory Opinion 89-375, citing Hartment v. Board of Trustees, 436 So.2d 837 (Ala. 1983). "The rule against prior personal knowledge only applies to knowledge garnered from extrajudicial sources. Knowledge about matters in a proceeding that has been obtained by a judge within the proceeding itself or within another legal proceeding is permissible and does not call for disqualification." J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics § 5.11 at 115 (1990). Under the "extrajudicial source rule," "that a judge presided in a previous criminal trial is generally not a ground for disqualification in a subsequent trial involving the same defendant because the source of any opinion the judge might hold about the defendant is not extrajudicial." Judicial Conduct at § 5.05 at 106. See Lindsey v. Lindsey, 229 Ala. 578, 580, 158 So. 522 (1934) ("It is very properly admitted that the mere fact of hearing the evidence and rendering a decision adverse to appellant in the former proceeding would not disqualify the judge to try this case involving the same issue of fact."). See also Advisory Opinion 89-350.

II

Your friendship with the pastor of the defendant church is not an automatic ground of disqualification.

"Whether or not disqualification is required when a friend appears as a party to a suit before a judge depends on how personal the relationship is between the judge and the party." J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics § 5.15 at 125 (1990). See advisory opinions 81-99; 83-183.

"The bias or prejudice which has to be shown before a judge is disqualified must be 'personal' bias, and not 'judicial' bias. Personal bias, as contrasted with judicial, is an attitude of extra-judicial origin, or one derived non coram judice. In re White, 53 Ala. App. 377, 300 So.2d 420 (1977). The fact that one of the parties before the court is known to and thought well of by the judge is not sufficient to show bias. Duncan v. Sherrill, 341 So.2d 946 (Ala. 1977).'

> McMurphy v. State, 455 So.2d 924, 929 (Ala.Cr.App. 1984). "[I]t is an inescapable fact of life that judges serving throughout the state will necessarily have had associations and friendships with parties coming before their courts. A judge should not be subject to disqualification for such ordinary relations with his fellow citizens." Ex parte Hill, 508 So. 2d 269, 272 (Ala. Civ. App. 1987) (judge's recusal upheld where judge recused himself because "there has been a long association between the parties and this judge and his wife, from living together at an early age in an apartment complex to communication and schooling of the children, church affiliation and many other associations over the years"). See Clemmons v. State, 469 So. 2d 1324 (Ala. Crim. App. 1985) ("That the trial judge and victim knew each other and possibly enjoyed a friendship both professionally and socially is not reason enough to require the judge to recuse himself").

It is the opinion of this Commission that your recusal is not required under the circumstances presented.

Although the Canons of Judicial Ethics have the force of law, the opinions of the Judicial Inquiry Commission are rendered in connection with the ethical conduct of the judge and "are not binding and do not affect a party's rights or remedies." Ex parte Balogun, 516 So.2d 606, 609 (Ala. 1987).

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