93-511
[Modified, as to Issue 3, by 99-740]

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

December 10, 1993

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether you are disqualified from presiding over a civil case.

Included in your request are copies of the motion to recuse, the transcript of the hearing on that motion, and your order denying recusal. Based on that material, this Commission finds the relevant facts to be as follows:

In 1993, the Wife filed a civil action against her former Husband seeking to hold the Husband in contempt for failure to pay child support. That proceeding will be heard by the Judge sitting without a jury. The Husband has filed a motion to recuse alleging that the Judge is biased and prejudiced against him.

1. The Judge presided over the divorce trial between the Wife and the Husband in August of 1990. There was no motion to recuse filed at that time.

2. The Husband was the “mayor” of the Old Cloverdale Association for the 1980-1982 term. In order to prevent the construction of condominiums in the neighborhood, the Association, Husband, had some “business dealings” with a Law Firm. In this regard, the Association “made the decision” but the Husband, as mayor, “made the contacts.” The Judge, as a partner of the Law Firm, did some legal research on the issue at the request of his partner and not at the direct request of either the Husband or the Association. The legal research was performed without charge to the Association. After the Judge did that research, the Association hired a different law firm to prevent the construction. The attorney representing the Husband is not a member of the Law Firm.

3. Both the Wife and the Judge’s wife are members of the Daughters of the American Revolution.

4. The Husband testified that during the period while he and his Wife were married, he took his children to the Judge’s house once, and the Judge’s wife picked up the children from the Husband’s house once. The Judge stated that, in this regard, the only occasion he remembered was when the Husband brought his children to “the side of” the Judge’s house where everyone met for a field trip to Fort Toulouse as a function of the Children of the American Revolution.

5. The Judge is presently a candidate for an appellate court position. The Wife's attorney is a member of the Judge's campaign advisory committee.

It is the opinion of this Commission, that your disqualification is not required under these circumstances.

1. There is no allegation that the Judge is disqualified in the enforcement proceedings because he presided over the original divorce trial. 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 extrajudicial source. Hartment v. Board of Trustees, 436 So.2d 837 (Ala. 1983)." Advisory Opinion 89-375. "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).

2. There is no basis for disqualification due to the fact that over ten years ago the Judge performed "legal work" on behalf of the Husband and the Association the Husband represented.

> "The general rule is that a judge is not automatically disqualified from presiding over cases involving a former client whom the judge represented in an unrelated matter. See, J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics, 131 (1990); Annot., 72 A.L.R.2d 443, §10(B) (1960).
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> "However, a judge may be prohibited from presiding over a case involving a former client whom the judge represented in an unrelated matter where 'his impartiality might reasonably be questioned' under Canon 3C(I). Judicial Conduct at 131. Among the factors to consider in determining whether a judge's impartiality might reasonably be questioned in cases such as this are the nature of the prior and present cases, the nature of the prior representation, and the frequency, duration, and the time passed since the prior representation." Advisory Opinion 91-431.

See also Advisory Opinion 83-193.

3. The mere fact that both the plaintiff Wife and the Judge's wife are members of the Daughters of the American Revolution is too tenuous, in and of itself, to form a basis for disqualification. We analogize this situation to a judge's friendship with a party to a proceeding over which the judge presides.

"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 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"). See Advisory Opinion 93-510.

4. The fact that prior to the 1990 divorce, the Judge and his wife and the defendant Husband and plaintiff Wife and their children have participated in an extremely limited "carpooling" arrangement provides no basis for disqualification. That mere fact does not provide even the appearance that the Judge has a bias toward or a prejudice against the Husband.

5. The fact that the Wife's attorney is a member of the Judge's campaign advisory committee does not require disqualification. In Advisory Opinion 91-420, this Commission held that a judge is not disqualified from sitting in proceedings in which a party is represented by the judge's re-election campaign treasurer or a member of his firm, or a member of the judge's re-election advisory committee or members of their firms, or both parties are represented by one of the above. We caution that a judge should not accept campaign contributions from litigants or their attorneys during the pendency of a lawsuit.

We have considered the cumulative effect of the assigned grounds of disqualification, including the facts that the Judge will be the finder of fact and that a jury will not decide the factual issues presented. It is the opinion of this Commission that the judge is not disqualified under the facts 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 the members of the Commission and is the opinion of the Commission.