

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

October 6, 1995

The Judicial Inquiry Commission has considered your request for an advisory opinion as to whether your disqualification is required by the Canons of Judicial Ethics under the following circumstances:

An election contest was filed in the Probate Court of Jefferson County contesting your election as a circuit court judge in November, 1994, and a local attorney was one of the signatories on December 2, 1994, to the bond for costs concerning this contest. After a ruling in your favor, the contestants appealed to the Alabama Supreme Court, and on July 10, 1995, the same local attorney signed again as a surety for the costs of the appeal. The attorney in question represents the plaintiff in a divorce proceeding that was initiated close to six weeks before the attorney signed the December, 1994, bond for costs. On August 22, 1995, he filed a motion for your recusal, after you had already heard numerous motions in the proceeding and had issued temporary orders and orders to compel.

The Canons which appear possibly relevant to your inquiry are Canons 3C(l) and 3C(l)(a). Canon 3C(l)(a) requires recusal in the event that a judge harbors a personal bias or prejudice concerning a party, for any reason. If you have any actual bias or prejudice concerning a party due to the circumstances described above, you are disqualified under Canon 3C(l)(a).

Canon 3C(l) provides that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. The Commission has previously decided that this provision must be considered in light of the reality that judges in Alabama are subject to nomination and election through political campaigns. Both this Commission and the appellate courts in this state have generally held that mere representation of a party by a political opponent or a supporter does not cause a judge's impartiality to be reasonably questioned. See, e.g., Advisory Opinions 91-420 and 84-219; Clontz v. State, 531 So.2d 60, 62 (Ala.Crim.App. 1988); Miller v. Miller, 385 So.2d 54, 55 (Ala.Civ.App. 1980); and Reach v. Reach, 378 So.2d 1115, 1117 (Ala.Civ.App. 1979).

Where an attorney representing a party is himself an opposing candidate of the judge in an ongoing judicial election campaign, the Commission has held that a judge need not disqualify himself where the attorney's initial appearance in the case predated the announcement of his candidacy. Advisory Opinion 94-520. This opinion was due, in part, to the principle that a party should not be able to engage in "judge-shopping" by manufacturing bias or prejudice that previously did not exist.

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From the facts provided with your opinion request, the attorney in question was already involved in the litigation in question before he signed the bond for costs. The Commission also finds it significant that the motion for recusal was not made until months later, after numerous rulings and without any allegation of actual bias or prejudice.

It is the opinion of the Commission that your recusal is not required in this case unless you have an actual bias or prejudice concerning a party to the case.