

Judicial Inquiry Commission

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August 9, 1996

The Judicial Inquiry Commission has considered your request for an advisory opinion whether a part-time municipal judge may preside over a criminal proceeding against a circuit judge where the municipal judge ordinarily appears before that circuit judge as an attorney in three or four cases a year. It is the opinion of the Commission that disqualification is required under Canon 3C(l), which provides that a judge should disqualify himself when "his impartiality might reasonably be questioned."

The test for disqualification under the general provision in Canon 3C(l) is whether "a person of ordinary prudence in the judge's position knowing all of the facts known to the judge [would] find that there is a reasonable basis for questioning the judge's impartiality." In re Sheffield, 465 So. 2d 350, 356 (Ala. 1984). Recusal is required under this provision when facts are shown which make it reasonable for members of the public, a party, or counsel to question the impartiality of the judge. Id., at 355-356. The question is not whether the judge is actually impartial, but whether another person knowing all of the circumstances might reasonably question the judge's impartiality -- whether there is an appearance of impropriety. Ex parte Duncan, 638 So. 2d 1332, 1334 (Ala. 1994).

The Commission does not suggest that there is any actual bias in this case, and it accepts your representation that you do not personally have a problem in hearing the case at issue. However, the Commission believes that it would be reasonable for members of the public to question the impartiality of any judge who is called upon to preside over a criminal charge against another judge when he represents clients as an attorney in cases before the defendant/judge.

Sincerely,

JUDICIAL INQUIRY COMMISSION