

## Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an advisory opinion whether a judge is disqualified from hearing a civil case when the plaintiff's attorney has filed a suit for declaratory and injunctive relief in which the judge is one of the parties defendant in his official capacity as presiding judge of the judicial circuit. The suit for declaratory and injunctive relief alleges violations of state law in the selection and retention of contract counsel to represent indigent defendants in criminal cases. The suit does not appear to allege any personal malfeasance by the judge, but under Ala. Code Section 15-12-3 the presiding circuit judge administers the indigent defense system, and under Ala. Code Sections 15-12-4(e)(4) and 15-12-26 contracts with contract counsel are subject to the approval of the presiding circuit judge.

This matter is governed by the general provisions in Canon 3C(l) that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. This Commission has previously held that the mere filing of a lawsuit against a judge by an actual party to a suit does not disqualify the judge from sitting in other pending matters that concern the litigant, and that this is an area where the particular facts and circumstances must be examined in order to determine whether the judge is disqualified. Advisory Opinions 83-176, 88-326, and 90-403.

If the judge has developed a personal bias or prejudice concerning the attorney as a result of the contract counsel litigation, then the judge is disqualified under Canon 3C(l)(a). Unless there are additional facts in the contract counsel case which would cause the judge's impartiality reasonably to be questioned (See, e.g., Advisory Opinion 88-326), it is the opinion of the Commission that the judge is not disqualified.

Yours very truly,

JUDICIAL INQUIRY COMMISSION