

Judicial Inquiry Commission

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March 14, 1997

The Judicial Inquiry Commission has considered your request for an advisory opinion whether a judge is disqualified from hearing a divorce action because he heard and ruled on some of the motions in the plaintiff's prior divorce case and/or due to prior knowledge from the earlier case. It is the opinion of the Commission that you are not disqualified from hearing the present action.

A judge must disqualify himself if he has personal knowledge of disputed evidentiary facts concerning a proceeding. Canon 3C(1)(a). However, this Canon does not require disqualification where a judge's familiarity with one case is derived from having tried another case. Advisory Opinions 89-375, 93-510, and 93-511; see also, *McMurphy v. State*, 455 So. 2d 924, 929 (Ala. Crim. App. 1984). "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, §4.10 at 113 (1995).

In addition, even prior rulings adverse to a party in a prior trial in the same case do not form a basis for disqualification. A judge may only be disqualified if he has a personal bias, and adverse rulings are not by themselves sufficient to demonstrate such bias. Advisory Opinions 93-503, 93-510, 93-511, 94-522, 95-574; *Whisenant v. State*, 482 So. 2d 1225, 1237 (Ala. Crim. App. 1982), aff'd in relevant part, 482, So. 2d 1241, 1245 (Ala. 1983); *Hartman v. Board of Trustees of University of Alabama*, 436 So. 2d 837, 841 (Ala. 1983); *Lindsey v. Lindsey*, 229 Ala. 578, 580, 158 So. 522 (1934); and Judicial Conduct §4.05 at 102.

Respectfully submitted,

JUDICIAL INQUIRY COMMISSION