

Judicial Inquiry Commission

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June 27, 1997

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning: (1) whether a judge must recuse himself or herself from a case when a party to the case files a complaint with the Judicial Inquiry Commission against the judge with respect to the judge's actions in the case; (2) whether a judge is obligated to recuse when a litigant claims in a complaint filed with the Judicial Inquiry Commission that the judge and others have conspired to damage the litigant's reputation and have disclosed confidential information to the media; and (3) whether a judge is disqualified from hearing any further proceedings in the case because the judge filed an ethical complaint against the attorney-litigant with the State Bar.

It is the opinion of the Judicial Inquiry Commission that, under the Canons of Judicial Ethics, neither the filing of a complaint against the judge nor the nature of that complaint requires the judge's disqualification unless the judge becomes personally biased or prejudiced as a result. The judge's filing of a complaint against the attorney-litigant will likewise not require the judge's disqualification unless the judge becomes personally biased or prejudiced against the attorney-litigant. **97-655**

With respect to the effect of the filing of a complaint against the judge and the content of such a complaint, the Judicial Inquiry Commission has stated:

It is well settled that a judge is not disqualified from sitting in a proceeding merely because the judge has been made aware that one of the parties has filed a complaint against the judge with the Judicial Inquiry Commission. Advisory Opinions 90-391, 87-292. However, a judge must disqualify himself if the judge determines that the filing of the complaint has generated a personal bias or prejudice in the judge against the party. Canon 3C(l)(a).

Advisory Opinion 92-447. These opinions remain valid. Logically, too, there is no basis for distinguishing between the fact of the complaint and its content. Accordingly, unless the judge has developed a personal bias or prejudice against the party, recusal is not required.

The judge's filing of a complaint against the attorney-litigant with the State Bar is likewise not generally disqualifying. Contempt proceedings are an analogous situation, and recusal is not required there. A treatise explains: **97-656**

A judge is not automatically disqualified from presiding over contempt of court proceedings by virtue of the fact that the allegedly contemptuous behavior occurred in the presence of the judge or was directed at the judge. Even where the contemptuous conduct consists of strong, personal criticism of the judge, disqualification is not necessary. At some point, though, a line will be crossed where disqualification from contempt proceedings is mandated where a judge has become biased or prejudiced. Thus, where a verbal attack upon a judge becomes particularly offensive, or where a judge becomes enraged at offensive conduct, recusal is necessary.

Shaman, Lubet, Alfani, *Judicial Conduct and Ethics*, 2d ed., § 4.09 at 111 (footnotes omitted). On the facts stated, it does not appear that the judge has become personally biased or prejudiced. Thus, recusal is not required.

Yours very truly,

JUDICIAL INQUIRY COMMISSION