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## Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

January 23, 1998

The Judicial Inquiry Commission has considered your request for an advisory opinion whether a judge is disqualified under the following circumstances: a party has filed a motion for recusal, alleging that the judge presumably has preconceived ideas about the case because he heard a prior related case, that the party has filed a complaint against the judge with this Commission, that the party perceives the judge to be biased in favor of the opposing party, that the judge permitted persons he knew who were associated with the opposing party to sit in the courtroom during the prior proceeding, and that the judge was very solicitous of one of these persons in his chambers during a break in the proceeding. The judge denies any influence from the prior case on his judgment concerning the facts in the present case; has no knowledge of any complaint before this Commission, and states the party's allegation in this regard will not affect his judgment; and, denies any bias in favor of the opposing party. The judge also denies a close friendship with the persons who sat in the courtroom, and denies both that the individual named was in his chambers and that he was solicitous towards her.

It is the opinion of the Commission that the judge is not disqualified from hearing the case at issue under the facts presented.

As this Commission has previously observed, the bias necessary to disqualify a judge generally must arise from an extrajudicial source, and involve an opinion on the merits based on something other than what the judge has learned from participating in the particular case or a prior case. See Advisory Opinions 83-188, 89-375, 92-447, 92-449, 93-510, and 97-639. The mere fact that a judge has heard and made factual findings in a prior related case is not ground for disqualification. Advisory Opinions 83-188, 86-267, 89-350, 89-375, 92-449, and 97-639.

The Commission also has previously held that the mere fact that a party has filed a complaint against a judge with this Commission is not ground for a judge's disqualification. To hold otherwise would allow a litigant to control judicial proceedings whenever a litigant becomes dissatisfied with the course of the proceedings, which would cause chaos in the conduct of judicial proceedings and the administration of justice. Of course, if a judge is actually influenced by the filing of a complaint against him, or if special circumstances exist such that the filing of the particular complaint actually causes the judge's impartiality to be reasonably questionable, then the judge is disqualified. See Advisory Opinions 87-292, 89-391, 92-447, 97-636, and 97-655. The judge in this case does not feel affected, and no special disqualifying circumstances are apparent.

The fact that a litigant believes a judge to be biased toward the opposing party is also not ground for disqualification. Like the situation of complaints by a litigant against a judge, to hold a judge disqualified based upon a mere perception by a litigant would allow the litigant to control and disrupt judicial proceedings. Canon 3C requires disqualification only when the judge's impartiality might reasonably be questioned, which applies a reasonable person standard to the objective facts allegedly causing disqualification. The Alabama Supreme Court has interpreted this Canon to require disqualification when a man of ordinary prudence, knowing all the facts known to the judge, would reasonably question the judge's impartiality. In re Sheffield, 465 So.2d 350, 356 (Ala. 1984). See Advisory Opinions 89-385 and 95-541.

The Commission also has previously written to the question of a judge's friendship or other association with a litigant or a person connected with a litigant. See, e.g., Advisory Opinions 81-99, 83-183, 84-213, 91-420, 93-510, 93-511, 95-541, and 96-613. The facts provided do not suggest such a close relationship as to cast reasonable doubt on the judge's impartiality. Compare, Bryars v. Bryars, 485 So.2d 1187 (Ala. Civ. App. 1986). Since the judge also denies the party's allegations of conduct and other circumstances suggesting such a relationship, no ground for disqualification is apparent in this case.

Yours truly,

JUDICIAL INQUIRY COMMISSION