

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

November 13, 1998

The Judicial Inquiry Commission has considered your request for an advisory opinion whether a judge is disqualified from ruling in two cases due to one of the parties having filed a lawsuit against the judge, among others. The lawsuit complains of rulings and failure to rule or to take other action, which the plaintiff attributes to misconduct. One of the cases before the judge was settled, but the Court retained jurisdiction to determine the validity and amount of claimed attorney fee liens related to the settlement proceeds. The other case is pending a ruling by the Court on a summary judgment motion.

It is the opinion of the Commission that you are not disqualified to rule in the two cases at issue, either during the pendency of the lawsuit against you or after disposition of that lawsuit, unless you develop an actual, personal bias as a result of that suit.

“A lawsuit pending between a judge and a party may be good cause of recusation, but a party cannot disqualify a judge to sit in his case by bringing an action against him after the principal suit is commenced.’ Absent a showing that a judge in fact is influenced adversely as a result of a ‘collateral’ lawsuit, disqualification serves no purpose because the party would join any judge as a party who becomes connected with the original case. To permit wholesale disqualification in this situation would allow litigants to choose their judge by filing lawsuits against all judges not to their liking. Equally important, impugning the integrity of a judge should not lead to disqualification when based on nothing more than the speculation or conjecture of pleadings.”

L. Abramson, Judicial Disqualification Under Canon 3 of the Code of Judicial Conduct 36 (American Judicature Society, 2nd ed. 1992) (footnotes omitted).

This Commission has consistently held that the mere filing of a lawsuit against a judge by a litigant based on the judge’s actions in a pending case is insufficient to cause the judge’s disqualification in that case. Advisory Opinions 92-452, 90-403, 86-273, 83-176, and 77-29. To hold otherwise would allow a litigant to control the selection of his trial court judge, and could cause orderly court processes to become chaotic. However, disqualification is required if the litigant’s actions cause the judge to develop a “personal bias or prejudice” regarding the litigant. Canon 3C(1)(a).

Yours truly,

JUDICIAL INQUIRY COMMISSION