

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MARCH 26, 1999

ADVISORY OPINION 99-722

DISQUALIFICATION RESULTING FROM SOCIALIZATION WITH A PARTY DURING THE PENDENCY OF A PROCEEDING

ISSUE

Is a judge disqualified from hearing a case if he went to lunch with a party while the case was pending before him? **Answer:** Yes, if it was a private meeting with the party in close proximity to any proceedings in the case and any other party or counsel express concern.

FACTS

A judge considers himself to be friends with many members of the local bar, and he has both gone to lunch with attorneys and has seen them on other social occasions when they have had cases pending before him. The judge presently has pending before him a case in which an attorney friend is a party. He recently went to lunch with this party while the case was pending before him. The other party's attorney, whom the judge also considers to be a friend, has expressed concern about whether the judge should remain on the case.

DISCUSSION

The Commission has previously addressed the question of disqualification due to a judge's friendship with a party, attorney, or other person connected with a case. *See* Advisory Opinions 93-510, 93-511, 95-541, and 96-613. The Commission observed in these opinions that judges necessarily will have associations and friendships with attorneys and parties coming before their courts, and that a judge is

not disqualified for such ordinary relations with his fellow citizens. Whether or not a judge is disqualified due to friendship generally depends on how personal the relationship is between the judge and the person connected to the lawsuit.

The Commission has not previously addressed the question whether a judge is disqualified as a result of having socialized with a *party* during the pendency of a proceeding before the judge.

Under Canon 3C(1), a judge is disqualified when "his impartiality might reasonably be questioned." The test under this canon is: "Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?" *In re Sheffield*, 465 So.2d 350, 356 (Ala. 1984). The question under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994).

In the Commission's opinion, there is a difference between mere participation in a social event that is also attended by a party, and socializing privately with a party who has a case then pending before the judge. Likewise, a private social meeting with a party on a day in close proximity to any proceedings in the case may appear differently than such a meeting at another point in time. *See Wells v. Del Norte School District C-7*, 753 P.2d 770 (Colo. 1987) (judge found disqualified when he sat at a restaurant table with counsel and

witnesses for one of the parties during a bench break from a hearing). Many other surrounding circumstances may also be relevant to the determination whether a particular social meeting between a judge and a party raises sufficient question as to the judge's impartiality as to require disqualification from a case. The fact that counsel for an opposing party expresses reasonable concern about the meeting is a factor that must be considered, although not controlling.

It is the opinion of the Commission that where a judge has had a private lunch with a party to a case in very close proximity to any proceedings in the case and another party or counsel in the case expressed reasonable concern about the meeting, the judge should recuse himself due to the appearance of possible partiality. As stated previously, the question under Canon 3C(1) is not whether the judge is actually impartial, but rather whether his impartiality is reasonably questionable.

Note: This opinion addresses social contacts between a judge and a party. It is not intended to address social contacts between a judge and an individual who is an attorney in a pending case.

REFERENCES

Alabama Advisory Opinions 93-510, 93-511, 95-541, and 96-613.

Alabama Canons of Judicial Ethics, Canon 3C(1).

Ex parte Duncan, 638 So.2d 1332, 1334 (Ala. 1994).

In re Sheffield, 465 So.2d 350 (Ala. 1984).

Wells v. Del Norte School District C-7, 753 P.2d 770 (Colo. 1987).

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; E-mail: jic@alalinc.net.