

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MARCH 17, 2000

ADVISORY OPINION 00-749

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### DISQUALIFICATION IN CASES IN WHICH AN ATTORNEY IS A JUDICIAL CANDIDATE IN OPPOSITION TO THE JUDGE

#### ISSUE

Is a judge disqualified to hear a criminal case when the assistant district attorney who has handled the pretrial motions has informed the judge that she intends to qualify to run against the judge in an upcoming primary election?

**Answer:** No, absent additional facts or circumstances that either cause the judge to harbor a personal bias or prejudice in the case or that create a reasonable question as to the judge's impartiality.

#### FACTS

A circuit judge has been assigned a capital murder case that is set for trial on April 10, 2000. In February, the assistant district attorney who has handled all the pretrial motions in the case informed the judge she intended to qualify and to run against the judge in the next primary election. The judge feels no personal bias or animosity toward this attorney, the district attorney, or anyone in the district attorney's office, and he believes he can try the case in the same manner that he could if the district attorney had not announced to him her intention to run against him in the primary.

#### DISCUSSION

In Advisory Opinion 94-520, the Commission decided a judge should disqualify himself from any case in which a party is represented by an attorney who is a candidate opposing the judge in an upcoming election where the initial

appearance of the attorney occurred after the attorney announced his candidacy, but that a judge is not automatically disqualified if an attorney in a pending suit announces his candidacy against the judge. In the latter situation, the Commission found that the judge is disqualified only if facts and circumstances exist arising out of the campaign that cause the judge to harbor a personal bias or prejudice toward either the attorney or his clients, or if other facts or circumstances exist which cause the judge's impartiality to be reasonably questioned. The Commission further held that the attorney must be an announced candidate for disqualification to occur, that rumors of a candidacy will not require disqualification. In Advisory Opinion 98-694, the Commission reaffirmed Advisory Opinion 94-520.

The Commission also has previously concluded that mere notice from an attorney that the attorney will be a candidate against the judge for the judge's seat during an upcoming campaign does not constitute a circumstance from which the judge's impartiality might reasonably be questioned. However, the Commission similarly cautioned that a judge should be ever vigilant and, if facts and circumstances arose which reflected adversely on the judge's impartiality or an actual bias appeared, then disqualification would be required. Advisory Opinion 97-674.

The Commission reaffirms the foregoing opinions, and it concludes that the judge in the present case is not disqualified, absent additional facts or circumstances arising that either cause the judge to harbor a personal bias or prejudice in the case or that create a reasonable question as to the judge's impartiality.

**REFERENCES**

Alabama Advisory Opinions 94-520, 97-674,  
and 98-694.

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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](mailto:jic@alalinc.net).