

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 00-751

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## DISQUALIFICATION WHEN A PARTY MAKES ALLEGATIONS AGAINST THE JUDGE

### ISSUE

Is a judge disqualified to hear a case when a party has appeared on a television news program making allegations against the judge?

**Answer:** Since the judge has no actual, personal bias resulting from the party's conduct, he is not disqualified.

### FACTS

A few months ago, a circuit judge heard a contempt petition and a motion to modify that were related to a divorce action over which he had presided several years ago. In March, the former wife filed a motion to cite her ex-husband for contempt, and this motion has been set for hearing later this month. The ex-husband has filed a motion arguing the judge should recuse himself because the ex-husband has recently appeared on a local television news broadcast "speaking out in regard to allegations against" the judge.

The judge has not seen any portion of the news report at issue, and he has no knowledge of that report other than what is stated in the motion seeking his recusal. He does not feel he has any prejudice against either party in the case, and he believes he can be fair and impartial.

### DISCUSSION

This Commission has long held that a litigant's actions toward or statements about a judge during the course of a judicial

proceeding do not cause the judge to be disqualified unless the judge is actually influenced and develops a personal bias or prejudice as a result. *See, e.g.*, Advisory Opinions 90-391, 92-447, and 97-636. To hold otherwise would allow a litigant to control judicial proceedings by making disqualifying statements whenever the litigant becomes dissatisfied with the course of the proceedings, which would cause chaos in the conduct of those proceedings and in the administration of justice. Advisory Opinions 90-391, 98-686, and 98-710.

If a judge is actually influenced by a litigant's conduct and he or she develops a personal bias or prejudice against the litigant, then Canon 3C(1)(a) requires the disqualification of the judge. It is also possible that special circumstances might exist such that the making of a particular complaint actually causes the judge's impartiality to be reasonably questionable, which would require disqualification under the general provision in Canon 3C(1). Advisory Opinion 98-686.

The judge in the present case does not feel affected, and no special disqualifying circumstances are apparent. Thus, it is the opinion of the Commission that the judge is not disqualified.

### REFERENCES

Alabama Advisory Opinions 90-391, 92-447, 97-636, 98-686, and 98-710.

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

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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).