

# JUDICIAL INQUIRY COMMISSION

DATE ISSUED: SEPTEMBER 7, 2000

ADVISORY OPINION 00-761

DISQUALIFICATION WHEN FORMER POLITICAL OPPONENT OR SUPPORTER OF POLITICAL OPPONENT APPEARS AS COUNSEL IN CASE

## ISSUES

I. Is a judge disqualified to hear cases in which parties are represented by an attorney who was a judicial candidate in opposition to the judge in a recent election? **Answer:** No, absent the existence of either personal bias or prejudice or extraordinary circumstances creating a reasonable question as to the judge's impartiality.

II. Is a judge disqualified to hear cases in which parties are represented by attorneys who supported a judicial candidate who opposed the judge in a recent election as a result of allegations of bias that are denied by the judge? **Answer:** No, absent the existence of extraordinary circumstances creating a reasonable question as to the judge's impartiality.

## FACTS

An attorney who was a candidate in opposition to a judge in a recent election filed motions for recusal of the judge in three cases in which he represents a party. Four other attorneys have also filed motions for recusal of the judge in certain cases in which they appear as counsel; these motions are based on the attorneys having publicly supported the opposing judicial candidate and an affidavit by another attorney that the judge made certain statements that are said to indicate bias against attorneys who supported his opponent. The judge denies having made the statements alleged. He also wrote a letter to the opposing candidate and some of his key supporters

shortly after the election in which he promised to do everything in his power to unite the bench and the bar so that it could function and serve all the public; the letter also expressed the hope that they could work together toward achieving unity. The judge states that he has never deviated from his oath to be fair and impartial, and never will do so.

## DISCUSSION

Absent either personal bias or prejudice or the existence of extraordinary circumstances which cause a reasonable question as to the judge's impartiality, a judge is not disqualified when the defeated political opponent of the judge represents a party in a proceeding. Advisory Opinion 84-219, and 98-716. *See also, Reach v. Reach*, 378 So.2d 1115, 1117 (Ala. Civ. App. 1979).

[H]ostility toward a party's attorney must be both personal and extreme before it is disqualifying. This is particularly so when the judge's behavior toward an attorney does not grow out of the particular case the judge is hearing at that time. Antipathy towards a lawyer will not necessarily be considered . . . as extending to the lawyer's client, and where the antipathy is against the lawyer but not against the client personally, recusal will not be required.

J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics* §4.08, at 109-110 (2d ed. 1995) (footnotes omitted). "[A] judge will be disqualified where he or she shows hostility to a lawyer that is of such a degree that it adversely affects the judge's state of mind toward the lawyer's client." *Id.*, at 110.

The judge has indicated that he has no bias or prejudice against his former political opponent. No circumstances have been presented that demonstrate a reasonable basis to question the judge's impartiality in cases in which his former opponent represents a party. Thus, it is the opinion of the Commission that the judge is not disqualified to hear such cases. A judge is not disqualified to hear a case merely because attorneys in the case opposed the judge's candidacy for reelection. Advisory Opinions 95-578 and 98-716. Thus, there is no merit to a contention that a judge is disqualified because an attorney in the case publicly supported an opposing judicial candidate.

In the present case, allegations have been made that the judge made certain statements before the election that indicated bias against attorneys who supported his political opponent. However, the judge denies having made the statements alleged, and the allegation of bias is further negated by the letter the judge wrote after the election seeking to unify the bench and bar.

The Commission commented in Advisory Opinion 85-235 that "it is difficult to imagine an independent judiciary governed merely by a lawyer's unfounded accusations." The Commission has long held that a judge is not disqualified on the basis of accusations by litigants unless 1) the judge develops a personal bias or prejudice concerning a party as a result, or 2) special circumstances exist such that the making of the particular complaint actually causes the judge's impartiality to be reasonably questionable. Advisory Opinion 97-636, 98-686, 00-751. *See also*, Advisory Opinion 92-465.

The judge has stated that he has not developed a personal bias or prejudice as a result of the political campaign that will affect his state of mind toward attorneys who supported his opponent or their clients. Based on the facts before the Commission, the circumstances do not create a basis on which the judge's impartiality might reasonably be questioned. Thus, it is the opinion of the Commission that the judge is not disqualified to hear cases due to the appearance of attorneys who supported the judge's political opponent.

#### REFERENCES

Alabama Advisory Opinions 84-219, 85-235, 92-465, 95-578, 97-636, 98-686, 98-716, and 00-751.

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

J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics* §4.08 (2d ed. 1995).

*Reach v. Reach*, 378 So.2d 1115 (Ala. Civ. App. 1979).

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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).