

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 01-786

DISQUALIFICATION WHEN FORMER POLITICAL OPPONENT APPEARS AS COUNSEL IN CASE

ISSUES

Is a judge disqualified to hear a case 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.

FACTS

A motion to recuse was recently filed in an action pending before a circuit judge that asserts as its ground that one of the attorneys representing the defendants ran unsuccessfully against the judge in the election that occurred in November 2000. The case was filed in late August 2000. The attorney in question filed his appearance as additional counsel for the defendants after the election.

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, 98-716, and 00-761. *See also, Reach v. Reach*, 378 So.2d 1115, 1117 (Ala. Civ. App. 1979).

A judge is disqualified under Canon 3C(1)(a) whenever he or she has a bias or prejudice concerning a party for any reason. The Commission assumes from the inquiring judge's letter that he feels no animosity toward the attorney who was his political opponent. However, should this be in question, the judge should consider the following in determining whether disqualification is required under Canon 3C(1)(a).

[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 123 (3d ed. 2000) (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.*

A judge is disqualified under the general provision in Canon 3C(1) whenever his "impartiality might reasonably be questioned."

The mere fact that an attorney in the case is a recently defeated political opponent of the judge does not create a reasonable question as to the judge's impartiality. However, the existence of additional extraordinary circumstances might create such a question. Since no additional circumstances have been presented to the Commission, the Commission finds no basis for disqualification of the judge.

REFERENCES

Alabama Advisory Opinions 84-219, 98-716, and 00-761.

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

J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics* §4.08 (3d ed. 2000).

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

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.