

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 04-838

DISQUALIFICATION WHEN A FORMER POLITICAL OPPONENT APPEARS AS A PARTY IN A CASE

ISSUE

Is a judge disqualified to hear a case because one of the parties was a candidate in opposition to the judge in a judicial election over a dozen years ago? **Answer:** No.

FACTS

A district judge has been assigned to hear a divorce action in which one party was a candidate in opposition to the judge in a judicial election in 1990. Both of the parties have filed written agreement to the judge hearing the case, signed by both the parties and their attorneys, remitting any disqualification that might arise from this circumstance.

DISCUSSION

Canon 3C(1)(a) requires disqualification of a judge whenever the judge has a personal bias or prejudice concerning a party for any reason. The Commission assumes the inquiring judge feels no such personal bias or prejudice. Thus, the question is whether there is a reasonable question as to the judge's impartiality under the general disqualification provision in Canon 3C(1).

Under Canon 3C(1), recusal is required when "facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge." *Acromag-Viking v. Blalock*, 420 So.2d 60, 61 (Ala. 1982). Specifically, the test under Canon 3C(1) 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?" *Matter of Sheffield*, 465 So.2d 350, 356 (Ala. 1984).

The Commission has previously decided that

a judge is disqualified from hearing a case in which his opponent in an *upcoming* election is a party. "This opinion is based on the general provision in Canon 3C(1) that a judge is disqualified in any case in which his impartiality may reasonably be questioned. Although the Commission does not find that a judge's impartiality may reasonably be questioned in all cases in which an announced political opponent appears as counsel, it finds that the circumstance of the opposing candidate being a party to the proceeding is sufficiently different and requires recusal in any such case." Advisory Opinion 98-694.

Here, however, the party is not a current political opponent of the judge, but rather was such an opponent over a dozen years ago. While it is conceivable a campaign could be so acrimonious that there might be a reasonable question as to a judge's impartiality after such a long period of time, this is extremely unlikely and clearly not the case presented. It is the opinion of the Commission that the Canons of Judicial Ethics do not require disqualification of the inquiring judge.

REFERENCES

Acromag-Viking v. Blalock, 420 So.2d 60 (Ala. 1982).

Advisory Opinion 98-694.

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

Matter of Sheffield, 465 So.2d 350 (Ala. 1984).

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, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.