JUDICIAL INQUIRY COMMISSION

DISQUALIFICATION DUE TO PUBLIC CRITICISM BY A PARTY

ISSUE

Is a judge disqualified to continue to sit in a case when one of the parties has written a letter to the editor of the local newspaper that may be viewed as criticizing the local judicial system? **Answer:** No, so long as the judge has no actual, personal bias toward a party resulting from the incident.

FACTS

In late September, the Court of Civil Appeals issued an opinion reversing the decision of a trial judge awarding custody of a child to the child's father. The case had a complicated procedural history. The decision of the appellate court was based on a determination that the trial court incorrectly determined who ultimately bore the burden of proof. The appellate court's opinion directs the trial court on remand to consider the evidence already presented to it at the hearings conducted during the pendency of the case and, based on all of that evidence, to determine whether the father met his burden of proof under the *McLendon* standard.

On October 6, 2004, the mother wrote a letter to the editor of the local newspaper. The letter urged the public to contact state senators and representatives, asking them to vote against a bill said to propose an amendment to the state constitution to eliminate the power of the Court of the Judiciary to remove a judge from office. The letter stated that the mother had a hand in an earlier letter to the editor regarding the judicial system in the county, and it argues a need to maintain "protection against unethical judges." The trial judge believes the mother's letter was generated by an advertisement that appeared in the paper in August that asked, "Are you tired of the judicial system in [the] County," and encouraged people to contact the Judicial Inquiry Commission to obtain complaint forms. The judge states the mother's letter was the third such letter to the local paper.

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, 97-636 and 00-751. 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, 98-710, and 00-751.

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.

Any criticism of the trial judge here is indirect; there is nothing about the particular complaint made that would generate a reasonable question about the judge's impartiality. Thus, it is the opinion of the Commission that the judge is not disqualified to continue to handle the case on remand so long as he believes he remains impartial and will not be affected by the incident.

REFERENCES

Alabama Advisory Opinions 90-391, 92-447, 97-

636, 98-686, 98-710 and 00-752.

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

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.