

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 04-846

## DISQUALIFICATION WHEN PRIVATE PARTY CONTRIBUTES TO COURT PROGRAM

### ISSUE

Is a judge disqualified to hear a case due to one of the parties having made large contributions for the funding of a court program over which the judge presides?  
**Answer:** Yes.

### FACTS

A private entity has contributed \$150,000 to a county's drug court program since the inception of that program two years ago. These contributions are paid to the county and maintained in a separate account for the drug court. The judge who is responsible for presiding over the drug court has been assigned to a case in which the entity is a party. The judge was instrumental in establishing the drug court, and he is responsible for dealing with budget issues and working with drug court personnel.

The case before the judge was brought by the entity at issue as a judgment creditor seeking to garnish stock certificates held by the garnishee as collateral to secure a debt of the judgment debtor. The entity challenges the validity of the pledge of the stock certificates.

### DISCUSSION

Canon 3C(1) states that a judge is disqualified whenever the judge's "impartiality might reasonably be questioned." This general provision is followed by subsections listing some specific circumstances under which a judge's impartiality might reasonably be questioned.

Canon 3C(1)(a) requires disqualification of a judge whenever the judge has a personal bias or prejudice concerning a party. Under this provision, a judge would be disqualified to hear a case if he or she determined that he or

she could not be impartial, but rather would be affected by the possibility that a particular decision in the case might lead to a significant loss of funding for a court program.

None of the other specific subsections of Canon 3C(1) apply. In reaching this conclusion, the Commission notes that the judge does not have a financial interest in the outcome of the case, nor any other interest that could be substantially affected by the outcome. "It is now well established that an interest which a judge holds in common with the public at large is not disqualifying." W. Kilgarlin and J. Bruch, *Disqualification and Recusal of Judges*, St. Mary's Law Journal 599, 620 (1986). See Advisory Opinions 95-585 and 03-825.

The remaining issue is whether the judge is disqualified under the general provision in Canon 3C(1).

Recusal is required under Canon 3C(1) 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). See also, *Wallace [v. Wallace]*, 352 So.2d 1376, 1379 (Ala.Civ.App. 1977)]. Specifically, the Canon 3C(1) test 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?' Thode, *The Code of Judicial Conduct - The First Five Years in the Courts*, 1977 Utah L.Rev. 395, 402.

*Matter of Sheffield*, 465 So.2d 350, 356 (Ala. 1984). The question under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality. *Ex parte Dun-*

*can*, 638 So.2d 1332, 1334. (Ala. 1994). The recusal test stated in Canon 3C(1) sometimes bars trial by a judge who has no actual bias in the case. *Matter of Sheffield*, 465 So.2d at 356.

The entity providing funding in this case is private, not a governmental body that ordinarily is involved in or provides funds for court operations. The entity is not only a party before the judge, the judge knows that this entity has provided a large sum of money toward the funding of a court program which the judge was instrumental in establishing and over which he presides, including dealing with budget and personnel issues. The Commission assumes that the amount of money donated represents a significant portion of the program's funds. Under these facts, the Commission believes that a person of ordinary prudence might reasonably question the judge's impartiality. Thus, the Commission concludes that the judge is disqualified to hear the subject case.

#### REFERENCES

Advisory Opinions 95-585 and 03-825.

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

*Ex parte Duncan*, 638 So.2d 1332 (Ala. 1994).

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

W. Kilgarlin and J. Bruch, *Disqualification and Recusal of Judges*, St. Mary's Law Journal 599 (1986)

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