

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: APRIL 5, 2005

ADVISORY OPINION 05-850

DISQUALIFICATION WHEN PRIVATE PARTY CONTRIBUTES TO COURT PROGRAM

ISSUE

Is a judge disqualified to hear a case due to one of the parties, or a potential party in interest, having made large contributions for the funding of a particular court program? **Answer:** Under the facts presented, the judge is not disqualified unless he personally feels he might be affected.

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. After the judge who is responsible for presiding over the drug court recused himself from a case in which the donor entity is a party, the case was assigned to the other circuit judge in the circuit.

The case was brought by a judgment creditor seeking to garnish stock certificates held by the garnishee as collateral to secure a debt of the judgment debtor. The donor entity is the garnishee.

A motion for the recusal of the second judge has been filed. A similar motion has also been filed in another suit, on the theory that, if the plaintiff secures a judgment, it will seek to recover that judgment from the donor entity as well.

The second judge had very little involvement in the establishment of the drug court, does not preside over it, and does not work with its personnel except to the extent that such is occasionally required concerning defendants he has ordered to attend drug court. His other involvement with drug court is occasionally attending graduation ceremonies and

making further disposition of cases in which defendants fail to successfully complete drug court. As the only other circuit judge in the circuit, circumstances might arise requiring him to become more involved with the drug court, but he does not believe this to be likely.

DISCUSSION

In Advisory Opinion 04-846, the Commission advised the first judge that it was the Commission's opinion that he was disqualified under Canon 3C(1).

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.

Advisory Opinion 04-846.

The question is whether the differences in the circumstances now presented are material with respect to the test for disqualification. 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 issue 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 question 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 Duncan*, 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 Commission finds the circumstances presented to be materially different than those in Advisory Opinion 04-846. The Commission is of the opinion that the inquiring judge is not disqualified to hear the cases in question unless he personally feels that he might be affected.

REFERENCES

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

Advisory Opinion 04-846.

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

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

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.