

Judicial Inquiry Commission

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March 2, 1983

The Judicial Inquiry Commission has considered your request to the Commission for the Commission's official opinion concerning two separate matters. We will respond to these matters in the order in which you present them.

Your first question is whether, under the Alabama Canons of Judicial Ethics, a judge is disqualified from sitting in a proceeding in which a party to the proceeding has in the past unsuccessfully sued the judge in federal court under 42 USC 1983. You state that the party's suit against the judge was dismissed by the federal court upon the recommendation of the United States Magistrate initially reviewing the party's pro se complaint. The ground for dismissal was that the complaint, under any stretch of the imagination, was so frivolous as to fail to state a cause of action.

It is the opinion of the Commission that the judge's disqualification is not required in this instance. As you are aware, disqualification of judges is governed under the Alabama Canons of Judicial ethics by Canon 3C and more specifically by that portion of Canon 3C(l) which provides as follows:

"A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned ..."

Whether a judge's impartiality "might reasonably be questioned" must often be determined on a case-by-case basis. Under the present set of circumstances, it is the opinion of the Commission that there appears to be no basis to "reasonably" question the trial judge's impartiality unless under Canon 3C(l)(a) the judge himself determines or evidence exists that the trial judge has developed a "personal bias or prejudice" concerning the party, who originally sued him. **83-176**

Your second question is whether, under the Canons, a judge may respond either positively or negatively to the Board of Pardons and Parole with regard to a prisoner over whose case the judge presided. May the judge respond either before or after receiving notice from the Board pursuant to §15-22-36(d), Code of Alabama, 1975?

It is the opinion of the Commission that, under the Canons of Judicial Ethics, the judge, who presided over a state inmate's trial, is not precluded from responding either positively or negatively to the proposed parole of the inmate by the Board of Pardons and Parole. §15-22-25(a), Code of Alabama, 1975, recognizes the value of such input from the trial judge by requiring that the trial judge be given notice of the impending parole. Such input may be given either before or after notice is received by the trial judge. **83-177**