

Judicial Inquiry Commission

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August 27, 1984

The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge is disqualified from sitting in a judicial proceeding when he has been called as a witness in a bar disciplinary proceeding. It appears that the bar disciplinary proceeding arises out of a complaint filed by one of the attorneys in the judicial proceeding against his opposing counsel. The disciplinary action arises out of statements made to the judge by one of the attorneys during the judicial proceeding, and the judge is being called to testify in the bar proceeding concerning the statements. The bar disciplinary proceeding is entirely separate from the judicial proceeding in which the judge is presiding.

It is the opinion of the Commission that under the circumstances as presented the judge is not disqualified from continuing to sit in the judicial proceeding.

Disqualification is governed primarily by Canon 3C of the Alabama Canons of Judicial Ethics. That canon requires a judge's disqualification in any matter in which his impartiality might reasonably be questioned, including a proceeding in which the judge is required to be a material witness or has personal knowledge of disputed evidentiary facts. Such is not the case in the present instance. Here the judge will be a witness in the bar disciplinary proceeding and has personal knowledge of the attorney's statements which will be offered as evidence in the bar disciplinary proceeding. As stated previously, that proceeding arises out of, but is entirely separate and concerns entirely different issues and facts from the judicial proceeding. Thus, the judge is not disqualified from continuing to sit in the judicial proceeding.

Very truly yours,

JUDICIAL INQUIRY COMMISSION