

Judicial Inquiry Commission

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November 15, 1984

The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge should recuse himself from all cases involving a certain law firm or a member of the firm.

It appears from the facts set out that one member of the firm is representing another member of the firm as a plaintiff in a class action lawsuit challenging the constitutionality of Alabama's judicial circuits. Plaintiffs in that action claim that their voting strength is diluted because of the circuits in that in only two of Alabama's thirty-nine judicial circuits do Blacks maintain a voting majority. Discrimination in voting strength is alleged to be shown in that no Blacks have been elected to judgeships unless they were first appointed. While the judge in question is not a named party, the lawsuit includes all circuit judges as a defendant class. The relief sought is to enjoin the conducting of any further elections in the present judicial circuits, to issue a court ordered plan for the election of circuit judges which does not dilute, minimize or cancel out Black voting strength, to cut short all present judicial terms in the judicial circuits, and to order new elections consistent with the other requested relief.

Based on these facts, you seek two opinions from this Commission: first, whether circuit judges, members of the alleged class, are disqualified from sitting in cases in which the attorney-plaintiff represents a party; and second, whether these same judges are disqualified from hearing cases in which the attorney's firm represents a party.

Disqualification is governed by Canon 3C of the Alabama Canons of Judicial Ethics. That Canon provides in pertinent part that:

“(1) a judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned ...”

In the instant case, it is the opinion of the Commission that based on the facts presented, the judge would not automatically be disqualified in either instance. However, facts could arise which could cause disqualification. For instance, should the judge become so biased or prejudiced because of the lawsuit that he could not give the client of the attorney or the firm the impartial hearing to which the client is entitled, then disqualification would be required.

Further, it should be noted that the Commission has drawn a distinction between disqualification and recusal. Disqualification is covered by the above-cited Canon.

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The Canon requires automatic disqualification under specific circumstances. This does not, however, mean that a judge cannot recuse himself from sitting when he feels or believes the circumstances warrant such an act on his part. Thus, a judge may recuse himself from sitting in a proceeding even though no automatic disqualification exists.

Yours very truly,

JUDICIAL INQUIRY COMMISSION