

Judicial Inquiry Commission

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June 5, 1985

The Judicial Inquiry Commission has considered your request for an opinion concerning whether the Canons of Judicial Ethics prohibit a judge from keeping an agreement to recuse himself in all cases in which certain attorneys represent opposing litigants. From the facts presented, it appears that a certain attorney has accused the judge of committing "a gross miscarriage of justice" in reaching a certain decision. The attorney further accused the judge of favoritism in that case and other cases involving certain attorneys. The judge denied the allegations. The judge then recused himself in the case described and further agreed to recuse himself in all other cases involving the complaining lawyer and the lawyers the judge is alleged to favor. There appears to be no reason for or evidence of favoritism other than the attorney in question disagreed with a particular ruling. All of the attorneys in question have practiced regularly before the judge for a number of years. The judge continues to hear cases in which any one of the attorneys appears but does not hear cases in which they oppose each other.

It is the opinion of the Commission that, under the Alabama Canons of Judicial Ethics, a judge is prohibited from recusing himself in all cases in which certain specified attorneys oppose each other where the reason for the recusal is merely that one of the attorneys has accused the judge of favoritism toward other attorneys and of "a gross miscarriage of justice" in reaching a certain decision.

The Commission has recognized a distinction between recusal and disqualification. In Opinion 83-193, the Commission recognized that a judge's disqualification is governed by Canon 3C of the Alabama Canons of Judicial Ethics and that in cases where disqualification is not required by Canon 3C, a judge may recuse himself from sitting where he believes the circumstances warrant such an act on his part. This finding was not intended as authority for wholesale recusal based on unfounded accusations of a trial attorney.

A judge's decision as to whether or not a recusal would be appropriate should be made only after due consideration is given to his office and to the Canons of Judicial Ethics. Canons other than Canon 3C which must be considered are Canon 1, requiring judges to uphold the integrity and independence of the judiciary; Canon 2, requiring judges to avoid impropriety and the appearance of impropriety in all their activities; and Canon 3, requiring judges to perform the duties of their office impartially and diligently.

Wholesale recusals or an agreement between a lawyer and a judge as described in the facts considered here would run afoul of all of these Canons. First, it is difficult to imagine an independent judiciary governed merely by a lawyer's unfounded

accusations (Canon 1); second, the maintenance of such an unfounded agreement would give the appearance that a judge's judicial conduct is easily influenced by outside relationships (Canon 2C); and third, it would appear that the judge's decision to recuse, otherwise unfounded, may be based merely on his fear of criticism (Canon 3A(l)). A judge cannot diligently perform the duties of his office if he systematically, and for no reason other than attorney convenience, refuses to sit in a large number of cases.

When these Canons are considered, some circumstances could arise under which recusal would be appropriate. However, no such circumstances are presented in this instance.

Yours very truly,

JUDICIAL INQUIRY COMMISSION