

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

June 29, 1987

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a juvenile court judge can hear cases involving children, who the judge previously as an attorney represented as guardian ad litem. You specifically ask whether in dependency proceedings the judge who has previously served as guardian ad litem, is disqualified from sitting in dispositional reviews held every two years.

It is the opinion of the Commission that a judge is disqualified from sitting as judge in a dispositional review of a Department of Human Resources delinquency proceeding in which the judge previously acted as guardian ad litem for the dependent children. This opinion is consistent with our previous advisory opinion 86-270 and with the provisions of the Alabama Canons of Judicial Ethics.

Judicial disqualification under the Canons is governed specifically by Canon 3C. The construction and application of the Canons is specifically set out in Canon 1. These Canons provide in pertinent part as follows:

Canon 1

"A Judge Should Uphold the Integrity and Independence of the Judiciary.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective."

Canon 3C

"(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:

* * * *

(b) He served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer in the matter, or the judge or such lawyer has been a material witness concerning it.”

Under these provisions it is apparent that a judge may not sit in any proceeding in which he has acted as an attorney, in this instance a guardian ad litem for one of the parties.

It is clear that no real or actual bias need be shown under the provisions of Canon 3C. The initial standard set out in that Canon is whether the judge’s impartiality “might reasonably be questioned.” However, here the facts specifically meet the clear example of disqualification set out in 3C(l)(b), i.e., the judge has served as an attorney in the matter in controversy. He has served as guardian ad litem in the proceedings in which the children’s dependency was established. The present proceedings require a determination of whether that status should be continued. The same “matter in controversy,” the dependency status of the children, exists in both proceedings.

Canon 1 and Canon 3C require a broader construction of disqualification than existed prior to their implementation. The burden on the judge has changed from a “duty to sit” in all proceedings to a duty to disqualify himself when his impartiality might reasonably be questioned.

Sincerely,

JUDICIAL INQUIRY COMMISSION