

Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge is disqualified from sitting in certain proceedings.

Under the facts outlined, the judge presently has pending before him several lawsuits filed by one plaintiff. Recently the judge ruled in another lawsuit filed by that plaintiff that the plaintiff is a vexatious litigator within the purview of Code of Alabama, 1975, Section 12-19-272, for the purpose of taxing costs and attorney fees against the plaintiff. In that order the court first carefully considered each of the plaintiff's allegations and set out the ground for the legal insufficiency of each claim. Based on that ruling, the plaintiff filed suit against the judge alleging libel and slander. That lawsuit is presently pending before another judge. It is without question that the plaintiff frequently files frivolous litigation in both State and Federal courts.

Based on these facts, the question before the Commission is whether, assuming that the plaintiff's lawsuit is successfully terminated in favor of the judge, the judge is disqualified from sitting in lawsuits filed by that plaintiff in which the judge is not named as a party.

It is the opinion of the Commission that the facts as outlined do not require the judge's disqualification in any lawsuit filed by the plaintiff in which the judge is not named as a party. This opinion is based on the Commission's application of the Alabama Canons of Judicial Ethics and on the previous opinions of the Commission.

Judicial disqualification is based primarily on Canon 3C of the Alabama Canons of Judicial Ethics. In pertinent part, Canon 3C(l) provides as follows:

- “(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:
 - (a) He has a personal bias or prejudice concerning a party ...”

Further, on at least two previous occasions the Commission has had the opportunity to consider whether the filing of a lawsuit against a judge by a litigant would disqualify the judge from sitting in other matters concerning that litigant. See advisory opinions 86-273 and 83-176. In each instance the Commission determined that each fact situation

of this nature must be determined on its own merits. The Commission further determined that the mere filing of a lawsuit by a litigant against a judge does not disqualify the judge from sitting in other pending matters concerning that litigant. The Commission reasoned that it is axiomatic that a litigant may not control pending litigation merely by suing the presiding judge and that to base disqualification on the mere filing of such an action would create chaos in the judicial system.

Advisory opinion 83-176 is particularly applicable in the present situation. There the commission was asked whether after the lawsuit against the judge was dismissed as frivolous the judge would be disqualified from sitting in other proceedings involving the plaintiff. The Commission found that the facts presented did not warrant the judge's disqualification in other matters involving that plaintiff.

Here the Commission has been furnished with a copy of the judge's order finding the plaintiff to be a vexatious litigant within the meaning of Section 12-19-272. However, a copy of the lawsuit against the judge has not been furnished. If that lawsuit is based solely on matters for which the judge is immune from suit, i.e., his judicial rulings, and the judge examines his own feelings and determines that he harbors no personal bias or prejudice against the plaintiff due to the filing of the lawsuit, then Canon 3C(1) as set out above does not cause him to be disqualified from sitting in other proceedings involving that plaintiff. However, if the suit is such that a complicated court battle ensues before the matter is determined then factors could exist which cause the judge's impartiality to "reasonably be questioned" under the provisions of the applicable Canon.

Sincerely,

JUDICIAL INQUIRY COMMISSION