

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

October 2, 1989

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 a criminal proceeding wherein the defendant has previously unsuccessfully sued the judge in federal court under 42 USC 1983 and is presently suing the judge in his official capacity in a test case challenging the indigent defense system in Alabama. There is no demand for money damages in the presently ongoing civil case in which the criminal defendant claims that the indigent defense available to him from the state is constitutionally inadequate. The judge has been asked to disqualify himself in the criminal action.

It is the opinion of the Commission that under the described circumstances the judge is not disqualified. This opinion is based on Canon 3C of the Alabama Canons of Judicial Ethics and the previous opinions of the Commission.

On at least three different occasions this Commission has spoken to the issue of whether under Canon 3C a judge is disqualified from sitting in a proceeding where a party has previously sued the judge. See advisory opinions 88-326, 86273 and 83-176. In each instance, the Commission has failed to find disqualification where the previous action against the judge was resolved in the judge's favor and was based on the judge's performance in his judicial capacity. Therefore, it is the opinion of the Commission that the previously disposed of lawsuit filed by this defendant does not alone present any ethical impediment causing the judge's disqualification.

The second lawsuit alleged as a ground for disqualification presents a slightly different concern. However, that suit is in the nature of a declaratory judgment seeking to require additional state defense funds for the criminal accused. Thus, the lawsuit is more analogous to a mandamus or a pretrial appeal by the defendant seeking to have the judge ordered to provide him with defense funds to which he believes he is entitled. Such actions are sometimes necessary to test the accuracy of a trial court's rulings and are not of such a nature as to require disqualification. The Commission therefore does not find disqualification to exist based on the facts presented.

However, while no disqualification exists based on the facts presented, the judge should be ever mindful of the provisions of Canon 3C. If he should develop any personal bias or prejudice against the defendant based on the defendant's action or if any other factor exists which causes his impartiality to reasonably be questioned, then the judge should disqualify himself. The Commission does not find any such factors to exist in the facts as stated.