

Judicial Inquiry Commission

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December 12, 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 proceeding in which one of the parties is a newspaper which during the pendency of the proceeding published a newspaper article about a possible disciplinary investigation of the judge by the Judicial Inquiry Commission. The existence of an investigation concerning the judge was neither confirmed nor denied by the Commission according to the article. Also, according to the article, the judge had no knowledge of the existence of an investigation.

It is the opinion of the Commission that the Canons of Judicial Ethics do not require the judge's disqualification under the above described circumstances. This opinion is based on the provisions of Canon 3C of the Alabama Canons of Judicial Ethics.

Canon 3C governs judicial disqualification and provides in pertinent part 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, or personal knowledge of disputed evidentiary facts concerning the proceeding;

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In applying this canon the Commission must consider the effect of allowing a party by his own actions to cause the judge's disqualification. If by suing a judge, publishing an article about a judge, filing a complaint against a judge, making public statements against a judge, making speeches about a judge, etc. a party could cause the judge's disqualification, then it would be a simple matter for parties to control the selection of the judge for their cases by engaging in one of these activities. We do not believe that the Canons were intended to encourage such "judge shopping". Therefore, each such action by a party should be considered carefully to avoid this result.

In this instance, a newspaper article was published concerning reports that the judge was under investigation by the Judicial Inquiry Commission. In the article, the judge denied any knowledge of such an investigation. The Judicial Inquiry Commission

refused to either confirm or deny the existence of an investigation. The newspaper reported that its information came from two sources close to the investigation. Further, the litigation in question is a matter in which the newspaper has been allowed by the judge to intervene for the purpose of seeking access to judicially sealed court records. The judge has already denied the motion of the newspaper to set aside the seal and the matter is now before the court on the newspaper's motion to reconsider that denial. Upon reviewing these facts as presented, the article is not such as to cause a reasonable man, knowing the facts known to the judge, to question the judge's impartiality in this instance. See In re Sheffield, 465 So.2d 350 (Ala. 1984). Therefore, base on the foregoing, it is the opinion of the Commission that the publication of the article does not, standing alone, cause the judge's disqualification in the pending litigation.

However, we note that the judge should be ever mindful of the provisions of Canon 3C and if the publication of the article causes the judge to harbor a personal bias against the newspaper then such bias would cause the judge's disqualification.

Sincerely,

JUDICIAL INQUIRY COMMISSION