

## Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

June 24, 1991

By your letter of June 7, 1991, you request an opinion from the Alabama Judicial Inquiry Commission concerning whether you are disqualified under the following facts:

As an attorney in private practice before you became a judge, you were retained by an insurance company to defend J.T. and C.T. in two civil cases involving an automobile accident. The accident suits were filed against your clients in April and September of 1990. One case was dismissed in December of 1990, while you were still in practice. The remaining case is handled by your former law firm.

While both cases were on-going, J.T. filed a civil law suit against E.B. That suit involves slander of title in connection with E.B.'s collection of a claim against C.T., and the forced sale of real property in which J.T. and C.T. each had an undivided one-half interest. That suit also involves abuse of process in that J.T. had allegedly purchased C.T.'s undivided one-half interest in the property and J. T. was the sole owner of the property at the time of the sale. The suit is separate from the accident cases in which you represented J.T. In the suit against E.B., J.T. is represented by different counsel with whom you had no association. You never discussed the suit against E.B. with your client, J.T. You assert no bias for or against J.T.

It is the opinion of the Commission that you are not disqualified from presiding over the law suit your former client J.T. has filed against E.B. under the above described circumstances.

Canon 3C provides in pertinent part:

“C. DISQUALIFICATION:

- (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:

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- (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, ...”

Under the facts presented, you did not serve as a lawyer in the matter in controversy because “the same course of events is [not] relevant to both cases.” See Rushing v. City of Georgiana, 361 So.2d 11, 12 (Ala. 1978). Neither the suit involving the automobile accident nor the suit involving the real property has anything to do with the other.

Therefore, the question in this case is whether your “impartiality might reasonably be questioned.”

“Recusal is required under Canon 3C(l) when ‘facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge.’ Acromag-Viking v. Blalock, 420, So.2d 60, 61 (Ala. 1982). See, also, Wallace [v. Wallace], 352 So.2d 1376, 1379, (Ala.Civ.App. 1977)]. Specifically, the Canon 3C(l) test is: ‘Would a person of ordinary prudence in the judge’s position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge’s impartiality?’ Thode, The Code of Judicial Conduct - The First Five Years in the Courts, 1977 Utah L.Rev. 395, 402.”

In re Sheffield, 465 So.2d 350, 355-356 (Ala. 1984).

The general rule is that a judge is not automatically disqualified from presiding over cases involving a former client whom the judge represented in an unrelated matter. See, J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics, 131 (1990); Annot., 72 A.L.R. 2d 443, §10(B) (1960).

However, a judge may be prohibited from presiding over a case involving a former client whom the judge represented in an unrelated matter where “his impartiality might reasonably be questioned” under Canon 3C(l). Judicial Conduct at 131. Among the factors to consider in determining whether a judge’s impartiality might reasonably be questioned in cases such as this are the nature of the prior and present cases, the nature of the prior representation, and the frequency, duration, and the time passed since the prior representation. A consideration of such factors leads this Commission to the conclusion that you are not disqualified to hear J.T.’s suit against E.B.

Please be advised that this advisory opinion is limited to the facts set forth above.

Respectfully,

JUDICIAL INQUIRY COMMISSION