

Judicial Inquiry Commission

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August 21, 1992

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question involves a civil action over which you are presently presiding in which the plaintiff has filed a complaint against you before the Judicial Inquiry Commission.

It is well-settled that a judge is not disqualified from sitting in a proceeding merely because the judge has been made aware that one of the parties has filed a complaint against the judge with the Judicial Inquiry Commission. Advisory Opinions 90-391, 87-292. However, a judge must disqualify himself if the judge determines that the filing of the complaint has generated a personal bias or prejudice in the judge against the party. Canon 3C(l)(a).

Your second question involves a motion to recuse filed by the plaintiff alleging that you "promoted" a counterclaim by the defendants by your remarks during the course of the proceedings. In a response to the motion to recuse, you indicate that the plaintiff is representing herself, is not an attorney, and that your comments were intended as an explanation of the plaintiff's potential for liability.

"The bias necessary to disqualify a judge should arise from an extrajudicial source, resulting in an opinion on the merits based on something other than what the judge learned from participating in the case." L. Abramson, Judicial Disqualification Under Canon 3 of the Code of Judicial Conduct 24 (American Judicature Society, 2nd ed. 1992) (emphasis in original). See also McWhorter v. City Of Birmingham, 906 F.2d 674, 678 (11th Cir. 1990).

"Remarks and comments made by a judge in the context of court proceedings ordinarily will not be considered indicative of improper bias or prejudice unless they go so far as to show that the judge has closed his or her mind about a case before all of the evidence has been presented ... At an rate, so long as a judge remains open-minded enough to refrain from finally deciding a case until all of the evidence has been presented, remarks made by the judge during the course of the proceedings will not be considered as indicative of disqualifying bias or prejudice."

Judicial Disqualification at 107. Based on the information you have provided this Commission, your comments in explanation of the plaintiff's potential for liability do not constitute a basis for your disqualification.

The Commission has approved this opinion. Please contact me if you have any questions about this or any other matter.