

Judicial Inquiry Commission

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November 10, 1992

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is:

“Is a judge disqualified from sitting in a criminal proceeding where the named defendant is also a plaintiff in ongoing unrelated civil litigation in which said judge has been subpoenaed by a civil defendant to give deposition testimony, has given such testimony, and may be a potential defense witness upon the trial thereof.”

It is the opinion of this Commission that a judge is not disqualified from presiding over criminal proceedings against a defendant where that defendant is the plaintiff in an unrelated civil action in which the judge has been deposed under subpoena by the defense and may be subpoenaed as a defense witness at trial.

In Advisory Opinion 84-222, this Commission held that a judge is not disqualified from sitting in a judicial proceeding when he has been called as a witness in a bar disciplinary proceeding. In reaching that decision, the Commission emphasized the fact that the disciplinary proceeding “arises out of, but is entirely separate and concerns entirely different issues and facts from the judicial proceeding.”

Although you are not automatically disqualified under these circumstances, you should disqualify yourself if you develop any personal bias or prejudice against the criminal-defendant/civil-plaintiff or if any other factor exists which causes your impartiality to reasonably be questioned. Canon 3C(1)(a), Alabama Canons of Judicial Ethics. Such other factor which would cause your impartiality to reasonably be questioned would be if you were called as a witness to impeach the civil-plaintiff’s reputation or credibility.

This advisory opinion has been approved by the Commission. Please feel free to contact me if you have any question concerning this or any other matter.

Respectfully,