

Judicial Inquiry Commission

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December 18, 1992

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission on two questions.

You were recently elected as district judge of Covington County and will assume office in January of 1993. Your questions arise because of your prior service as an assistant district attorney and as a contract attorney for the Department of Pensions and Security (now known as the Department of Human Resources).

First, you are not disqualified in a criminal case against a defendant whom you have previously prosecuted where the defendant is charged with a crime totally unrelated to the prior offense.

“If the judge did not participate in the investigation, preparation, or presentation of the case, the mere fact that he was in the office of the district attorney has been held not to be grounds for disqualification. ... Clearly a judge is not disqualified from trying a case as judge when the defendant is charged with an offense different from one that the judge may have prosecuted when he served as a district attorney or assistant district attorney.”

Disqualification and Recusal of Judges, 17 St. Mary's Law Journal 599, 614 (1986).

A judge is not disqualified from presiding over the prosecution of a criminal offense where he had prosecuted the same defendant in the previous convictions which were used to enhance the defendant's sentence. Morgan v. State, 503 S.W.2d 770, 773 (Tex.Cr.App. 1974). “[T]he mere fact that the judge has previously prosecuted a party in a particular proceeding does not disqualify the judge from sitting in the current proceeding. Disqualification would exist, however, if the current proceeding in any way involves the matters or facts previously prosecuted.” Advisory Opinions 89-364 and 77-22.

Second, applying these same principles, you would not be disqualified from presiding over a case involving failure to pay child support where you previously prosecuted the defendant for the paternity of that same child if the paternity suit and the original child support suit were separate actions. However, if the child support had been awarded in the paternity suit, you should disqualify yourself from a case involving the failure to pay that child support.

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This opinion has been approved by the Judicial Inquiry Commission. If you have any questions regarding this or any other matter please contact me at your convenience.