

Judicial Inquiry Commission

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December 28, 1992

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether or not you are disqualified under the following circumstances:

You were a close personal friend with a prominent attorney in your judicial circuit. That attorney retired from the practice of law in 1984. After his retirement, the attorney never appeared as counsel on any matter and did not receive any compensation from his former law firm.

In May of 1991, you were facing financial difficulties. The retired attorney gave you \$50,000 on the condition that you would repay this money only in the event that you "gained such financial success that you had an excess of \$50,000." You signed a document acknowledging the transfer of this money.

The attorney died in September of 1992. Thereafter, the two former law partners of the attorney informed you that you would have to repay the \$50,000 to the estate of the deceased attorney, and that, if you did not, they would sue you. You informed the partners that you considered the \$50,000 a gift. As of this date, you have not repaid the \$50,000 and no claim has been filed against you.

For approximately one year you have been presiding over a complicated civil action in which a class of plaintiffs is seeking damages from a banking institution on the ground that the bank allegedly charged excess interest and charges in loan transactions. Neither the deceased attorney nor his estate are involved in this law suit.

However, in November of 1992, counsel for the defendant bank associated the deceased attorney's two former law partners as counsel in the pending suit. The defendant then filed a motion to recuse based on the appearance of the newly associated counsel.

It is the opinion of the Judicial Inquiry Commission that you are not disqualified under these circumstances.

"Where a party or the party's attorney acts toward a judge in a manner calculated to create bias or prejudice, disqualification of the judge ordinarily will not be required. A party should not be able to engage in 'judge-shopping' by manufacturing bias or prejudice that previously did not exist."

J. Shaman, S. Lubet, James Alfani, Judicial Conduct And Ethics §5.06, at 106 (1990). This Commission has previously held that a litigant may not cause the disqualification of a judge in pending litigation merely by filing suit against the judge in other proceedings. Advisory Opinions 92-452, 92-449, 91-413, 90-403, 89-383, 88-326, 86-276, 83-176, and 77-29. In Advisory Opinion 89-387, this Commission held:

“In applying [Canon 3C] 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 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 your request you state that “[O]ut of an abundance of caution I recently disclosed the transaction by amendment, but it is still my contention this was a gift and not required to be reported.” You request whether any additional disclosures are required to either the Alabama Supreme Court or the Ethics Commission.

Canon 6 requires that a judge regularly file two reports of his or her financial interests with the Clerk of the Alabama Supreme Court. One report shall be on the form prepared and prescribed by the State Ethics Commission. The second report shall contain “a list of the names and creditors to whom he owes money.” A judge must also file the proper disclosure form with the Alabama State Ethics Commission. Ala. Code 1975, § 36-25-14.

Since you have reported the receipt of the \$50,000 to both the Alabama Supreme Court and the State Ethics Commission, no additional disclosures to either institution appear to be required to comply with Canon 6 of the Alabama Canons of Judicial Ethics.

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.