

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

March 25, 1994

This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your request is whether a judge is disqualified from presiding over a case in which a party is represented by an attorney opposing the judge in the judge's political campaign for re-election.

It is the opinion of this Commission that a judge should disqualify himself from any case in which a party is represented by an attorney opposing the judge in the judge's political campaign for re-election where the initial appearance of the attorney on behalf of the party in the case occurred after the attorney had announced his candidacy for the judge's position. On the other hand, a judge is not automatically disqualified if an attorney in a pending suit already before the judge announces his candidacy against the judge. See Clontz v. State, 531 So.2d 60, 62 (Ala.Cr.App. 1988) (judge not required to recuse himself in probation revocation hearing even though defense counsel was judge's political opponent absent a showing that judge failed to maintain impartiality or that defendant did not receive a fair trial).

"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, J. Alfini, Judicial Conduct and Ethics §5.06 at 106 (1990)

However, if facts and circumstances exist arising out of the campaign, which cause the judge to harbor a personal bias or prejudice toward either the attorney or the clients of the attorney because of his representation, or if other facts or circumstances exist which cause the judge's impartiality to be reasonably questioned then the judge may be disqualified. Advisory Opinion 84-219.

In connection with the above, we hold that the attorney must be an announced candidate. Rumors of the candidacy will not require disqualification. See Michigan Advisory Opinion JI-23, May 16, 1990.

This advisory opinion has been considered by and is the opinion of the entire Commission.