

## Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge is disqualified from sitting in a case under certain circumstances. A Motion for Disqualification has been filed by one of the parties in a case that has been pending for some time. The case involves legal and factual matters affecting the entire citizenry of this state and is heavily disputed among different factions. During the pendency of the litigation the judge became a candidate for another judicial position. During the campaign, the judge, at a minimum by inference, referred to this case as an example of his courage and willingness to decide tough issues where other branches of government had failed to do their jobs or provide leadership. (The head of at least one other such branch is a party to the lawsuit). Also during the campaign, the judge's opponent, at a minimum also by inference, referred to the case, criticizing the judge's orders. The judicial campaign was for a state-wide office and had extensive state-wide media coverage.

It is the opinion of the Commission that, the judge is disqualified from continuing to sit in the case described. This opinion is based on Canon 3C of the Alabama Canons of Judicial Ethics and on the entire circumstances of the case, including but not limited to the above factors.

In pertinent part Canon 3C requires as follows:

A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned....

In deciding disqualification under Canon 3C two interests are paramount, the interest in justice in any given case and the importance of preserving public confidence in the judicial system. L. Abramson, Judicial Disqualification Under Canon 3C of the Code of Judicial Conduct, (American Judicature Society, 1986). The Commission is also cognizant of the fact that Canon 3C must be applied and enforced to avoid judge shopping such that it must be difficult for parties by their own action to create facts requiring disqualification. Recognizing these factors, the standard for disqualification under Canon 3C here is whether under the above circumstances, a person of ordinary prudence in the judge's position, knowing all of the facts known to the judge, would find that there is a reasonable basis for questioning the judge's impartiality. Matter of Sheffield, 465 So.2d 350 (Ala. 1984).

In the circumstances of this case, the judge is familiar with the political campaign. He is also familiar with strong disputes among different factions of citizenry as to how the matter should be resolved. He used his presiding in the case as an example of his courage and judicial leadership. The case is still pending. Those issues on which he publicly declared his courage and leadership are now being presented to him for reconsideration. This case, although not by name, has been part of a judicial political campaign in a year when statewide judicial political campaigns brought the dignity of the judicial office to a new low in the eyes of the bar and the public. While no one circumstance standing alone might require disqualification, all of these factors when considered together reach that level of facts providing a reasonable basis for questioning the judge's impartiality. Although no actual bias is shown, none is required where the facts as presented indicate a reasonable basis for the appearance of partiality. In the instant case, justice may be preserved while preserving public confidence in the judicial system through the disqualification of the judge in question. Under these circumstances, it is the opinion of the Commission that disqualification is required.