

Judicial Inquiry Commission

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January 26, 1996

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether recusal is required by the Canons of Judicial Ethics under a particular set of circumstances. A document encaptioned "Petition For Child Custody" was filed in a domestic relations case wherein the mother was seeking a post-divorce change of custody affecting the parties' minor children. The document requested that custody be awarded to the paternal grandparents, who were interveners in the proceeding; it bore the purported signatures of twenty-nine individuals. During the hearing of the case, counsel for the petitioner elicited from a signatory that the document's intended purpose was to sway the judge, and counsel for the petitioner suggested that the judge would be sensitive to the expressed views of the voters who had signed this document. Counsel for the petitioner had twice been advised by the judge, both before the hearing commenced and shortly after it commenced, to take any action she deemed warranted with respect to this document. After the conclusion of the hearing, petitioner's counsel asked the judge to request an advisory opinion regarding whether recusal of the judge was required under the Canons of Judicial Ethics.

Canon 3C(l) provides that a judge should disqualify himself when his impartiality might reasonably be questioned. The test under this canon is whether "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." In re Sheffield, 465 So. 2d 350, 356 (Ala. 1984). Recusal is required when facts are shown which make it reasonable for members of the public, or a party, or counsel to question the judge's impartiality. Id., at 355-356.

It is the opinion of the Commission that the facts presented do not provide a reasonable basis for questioning the judge's impartiality. Since the judge has also stated that he would not, in fact, be influenced by the document in question, no other possible basis for disqualification is apparent and recusal is not required.

Sincerely,

JUDICIAL INQUIRY COMMISSION