

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

May 9, 1997

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning a judge's obligation to recuse himself from hearing an appeal brought by a state trooper under the Alabama Administrative Procedure Act from the termination of his employment by the Department of Public Safety. The trooper was a suspect in the still unsolved shotgun attack on the judge's house, and his termination relates to the investigation into the assault.

It is the opinion of the Commission that the judge must recuse himself from hearing the appeal.

Canon 3C(1) provides, in part, "A judge should disqualify himself in a proceeding in which ... his impartiality might reasonably be questioned...." Under this Canon, the test for disqualification is: "Would a person of ordinary prudence in the judge's position knowing all of the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?" In re Sheffield, 465 So.2d 350, 356 (Ala. 1984). This test "may 'sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.'" Id., at 357, quoting In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed.2d 942 (1955).

In the case described, the Commission believes that a reasonable person would question the judge's impartiality. The trooper was a suspect in the still unsolved shotgun attack on the judge's house. He now appeals from his termination which is related to the unsolved crime. Thus, the judge should recuse.

Yours Truly,