

Judicial Inquiry Commission

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June 27, 1997

The Judicial Inquiry Commission has reviewed your letter of April 2, 1997, and has construed it, in part, as a request for an advisory opinion as to whether a judge's heavy regular workload justifies recusal from cases assigned to that judge by a presiding judge as the result of another judge's recusal.

It is the opinion of the Commission that a judge may not peremptorily reject cases properly assigned to him or her by a presiding judge. A judge's heavy workload may be considered in mitigation of a charge of failure to dispose of cases promptly, but will not constitute a complete defense.

Canon 3A(5) provides, "A judge should dispose promptly of the business of the court, being ever mindful of matters taken under submission." The canon goes on to call for judges to submit periodic reports of the cases under submission or advisement for six months or longer, with the report to include the date the case was taken under submission or advisement "and the reasons for the failure of the judge to decide such matters or cases." The Commentary to Canon 3A(5) explains, "Prompt disposition of the court's business requires a judge to devote adequate time to his duties ..." What time is adequate depends, in part, on the number of cases filed, a matter which is beyond the control of the judge. Nonetheless, if the number of cases increases, Canon 3 A(5) requires a judge to apply his or her best efforts to handle that caseload.

In Advisory Opinion 94-539, the Commission concluded that a district judge could not refuse to handle domestic relations cases where, pursuant to § 12-17-70, *Code of Alabama*, the presiding circuit judge had designated that all domestic relation cases be handled by that district judge. The Commission characterized such a peremptory refusal as "highly improper and unethical."

A judge who fails to dispose of the cases assigned to him or her promptly may be charged with and disciplined for violation of Canon 3A(5). Press of cases may be raised as a defense to such a charge. One treatise explains:

Reviewing courts generally have been sympathetic to the pressures caused by heavy workloads and inadequate staffing arrangements, sometimes even suggesting that they might have considered workload as a mitigating factor even if it was not raised in the judge's defense. However, heavy workload generally has been considered only in mitigation and not as a complete defense for failure of prompt disposition charges.

Shaman, Lubet, Alfini, *Judicial Conduct and Ethics*, 2d ed., § 6.06, at 183 (footnotes omitted).