

Judicial Inquiry Commission

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May 15, 1998

The Judicial Inquiry Commission has considered your request for an advisory opinion whether a judge is disqualified from hearing cases in which a party is represented by an attorney who will be the judge's opponent in the next general election. You also requested an opinion as to whether the judge is disqualified in a case in which the attorney in question is a party.

The Commission has previously held that a judge should disqualify himself from any case in which a party is represented by an attorney who is an announced candidate 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. In the same opinion, the Commission also held that a judge is not automatically disqualified from hearing a pending case already before the judge when an attorney in that case announces his candidacy against the judge, but that the judge is disqualified if facts and circumstances exist arising out of the campaign that cause the judge to harbor a personal bias or prejudice toward either the attorney or his clients. Advisory Opinion 94-520. See Clontz v. State, 531 So.2d 60 (Ala. Crim. App. 1988) (judge not required to recuse himself in probation revocation hearing even though defense counsel was judge's political opponent, absent a showing of personal bias or prejudice).

The Commission reaffirms its prior decision in Advisory Opinion 94-520. It is the opinion of the Commission that a judge is disqualified in cases filed after an attorney in the case has announced his candidacy in opposition to the judge, and that, with regard to cases already pending before the judge prior to the announcement of the attorney's candidacy, the judge is not disqualified absent additional facts or circumstances causing the judge to harbor a personal bias or prejudice against the attorney or his clients.

It is further the opinion of the Commission that a judge is disqualified from hearing a case in which his opponent in an upcoming election is a party. This opinion is based on the general provision in Canon 3C(1) that a judge is disqualified in any case in which his impartiality may reasonably be questioned. Although the Commission does not find that a judge's impartiality may reasonably be questioned in all cases in which an announced political opponent appears as counsel, it finds that the circumstance of the opposing candidate being a party to the proceeding is sufficiently different and requires recusal in any such case.

Yours truly,

JUDICIAL INQUIRY COMMISSION