

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

July 31, 1998

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether a judge is disqualified from hearing cases in which a party is represented either by an attorney who represents the judge as the relator in a quo warranto action, or an attorney who represents a defendant in that action. You note that a quo warranto proceeding is commenced in the name of the state for the purpose of vacating the charter of a corporation, and that such a proceeding is of a public nature rather than a personal action.

It is the opinion of the Commission that a judge is disqualified from hearing cases in which a party is represented either by an attorney who represents the judge as the relator in a quo warranto proceeding, or an attorney who represents a defendant in that action.

The Commission has long held that a judge is disqualified to hear cases in which a party is represented by either an attorney currently representing the judge/the judge's spouse in unrelated litigation, or an attorney currently representing a party opponent to the judge/the judge's spouse in such litigation. See, e.g., Advisory Opinions 80-74, 82-168, 88-337, 89-373, 92-443, and 95-588. This disqualification has been found to apply whether the unrelated litigation involves the judge in an individual, fiduciary, or official capacity. Advisory Opinions 87-313, 88-336, 88-337, and 96-616. Disqualification has even been found to be required where the attorney in question actually represented another entity, and the judge's spouse was only the beneficiary of the unrelated litigation. Advisory Opinion 92-451.

Only two exceptions to the foregoing rule have been recognized by the Commission. In one, the judge was named a defendant in his official capacity in a suit regarding the selection and retention of contract counsel to represent indigent criminal defendants. Advisory Opinion 96-629. The other exception involves a suit concerning the system of financially compensating district and circuit judges. The Commission decided with regard to such suit, which affects all district and circuit judges, that a judge who is a mere class member is not disqualified due to the appearance in a case of an attorney involved in that suit. Notably, the Commission also held that a judge who is personally involved, such as by being a named party, an intervener, or a monetary contributor to the support of the litigation, is disqualified to hear cases in which a party is represented by counsel for either the plaintiffs or the defendants in the judicial compensation suit. Advisory Opinions 95-581, 95-582, 95-584, and 96-597.

The prior rulings by the Commission on this subject are based on the general provision in Canon 3C(1) that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. The test under this canon is whether a person of ordinary prudence, knowing 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 (Ala. 1984). In view of the judge's personal involvement in the quo warranto action in question, it is the opinion of the Commission that a "reasonable person" might question the judge's impartiality in a case where the attorney for one of the parties either represents the judge or one of the defendants in the quo warranto action.

Yours truly,

JUDICIAL INQUIRY COMMISSION