

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: DECEMBER 18, 1998

ADVISORY OPINION 98-716

POLITICAL ACTIVITY OF PARTIES AND COUNSEL IN CONNECTION WITH JUDGE'S REELECTION CAMPAIGN

ISSUE

Is a judge disqualified to hear a case when the plaintiff engaged the judge's political opponent as a third co-counsel a few days before the election and less than two weeks before the scheduled trial date, the plaintiff supported the judge's opponent, the defendant's attorneys endorsed the judge in a newspaper ad just before the election, and the law partner of one of the plaintiff's attorneys also endorsed the judge in the same political ad? **Answer:** No, unless the judge has an actual bias or prejudice toward a party in the case.

FACTS

A petition for modification of a divorce decree was filed in February 1998, immediately after the appeals court upheld the judge's ruling against the plaintiff on an earlier petition. The plaintiff wrote several letters to the editor of the local newspaper expressing views against the judge's decision at about this time. In May 1998, the plaintiff filed a motion to recuse, which was denied on July 2, 1998, after hearing. On July 7, 1998, the plaintiff filed an amended petition for modification, which was set for hearing on July 17, 1998. On July 15, an attorney gave notice of appearance as co-counsel for the plaintiff. A continuance to September 17 was granted to allow additional counsel time to prepare. Another continuance was requested on September 3 due to the new attorney having a scheduling conflict, and the case was reset to November 10, 1998. On October 30,

the candidate opposing the judge in his campaign for reelection filed a motion to appear as a third attorney for the plaintiff, for the judge's recusal, and for a continuance. At the hearing of the motion on November 6 (four days after the election), she argued that the judge should recuse himself because she had run against him in the recent election, because the plaintiff had supported her, and because the defendant's attorneys had endorsed the judge in a political ad that ran in the newspaper the weekend before the election. The law partner of one of the plaintiff's attorneys also endorsed the judge in this ad.

DISCUSSION

The Commission previously has held that a judge is not disqualified in a proceeding merely because one of the parties supported the judge in a campaign for judicial office. Advisory Opinion 84-213. In Advisory Opinions 91-420 and 93-511, the Commission similarly decided that judges were not disqualified merely because parties were represented by the judges' reelection campaign treasurer and/or members of the judges' reelection advisory committees. The Commission decided in Advisory Opinion 95-578 that recusal from a pending case was not required because an attorney in the case signed as a surety for costs in an action contesting the judge's reelection. A judge is not disqualified to hear a case merely because parties in the case or their counsel have supported or opposed the judge's candidacy for reelection.

In Advisory Opinion 94-520, the Commission decided that a judge should disqualify himself from any case in which a party is represented

by an attorney who is a candidate opposing the judge in an upcoming election where the initial appearance of the attorney occurred after the attorney announced his candidacy, but that a judge is not automatically disqualified if an attorney in a pending suit announces his candidacy against the judge. However, this opinion did not address the situation of a candidate in opposition to the judge entering an appearance in a pending case. *See* Advisory Opinion 98-694.

The decision in Advisory Opinion 94-520 was due, in part, to the principle that a party should not be able to engage in “judge-shopping” by manufacturing a basis for disqualification that previously did not exist. Advisory Opinion 95-578. *See*, Advisory Opinions 95-548 and 95-586 on the subject of “judge-shopping.”

In the present case, the opposing candidate moved to enter an appearance in a pending case a few days before the election. The Commission has previously recognized that once a ground for disqualification ceases to exist, recusal is not required unless there are extraordinary circumstances which cause a remaining question as to the judge’s impartiality. *See, e.g.*, Advisory Opinion 96-617. The Commission also has held that a judge is not disqualified merely because the defeated political opponent of the judge represents a party in the proceeding. Advisory Opinion 84-219. Of course, if a judge harbors a personal bias or prejudice toward a party because of the political activity of the party’s attorney in opposition to the judge’s reelection, then the judge is disqualified. Advisory Opinions 84-219 and 95-578. *See also*, Clontz v. State, 531 So.2d 60 (Ala. Crim. App. 1988) (judge was not required to recuse himself where defense counsel was the

judge’s political opponent, absent a showing of personal bias or prejudice).

It is the opinion of the Commission that the judge is not disqualified in the present case unless he harbors a personal bias or prejudice toward a party related to the political activity of either the party or the party’s counsel.

REFERENCES

Alabama Advisory Opinions 84-213, 84-219, 91- 420, 93-511, 94-520, 95-548, 95-578, 95-586, 96-617, and 98-694.

Clontz v. State, 531 So.2d 60 (Ala. Crim. App. 1988).

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: jic@alalinc.net.