

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 99-720

## DISQUALIFICATION RESULTING FROM RECEIPT OF EX PARTE COMMUNICATION

### ISSUE

Is a judge disqualified because he heard an ex parte allegation of fact by a party's relative who was attempting to contact the judge through false pretenses? **Answer:** No, not unless the judge developed a personal bias or prejudice concerning a party as a result.

### FACTS

An individual came to the judge's office, insisting to speak with him about a hypothetical question. Hearing that the staff person present was having difficulty getting the person to understand that the judge could not talk with him, the judge went out to tell the person this himself. The person immediately blurted out an allegation of fact. The judge later realized that the person was a relative of a party in a case pending before him.

The judge has disclosed the facts on the record. The judge has no reason to suspect that the party was involved in the relative's conduct, and he feels no bias or prejudice toward or against either party as a result. However, if the relative becomes a witness in the case, the relative's conduct may affect the judge's assessment of his testimony.

### DISCUSSION

The Commission has long recognized that a litigant's actions toward or statements to a

judge during the course of a judicial proceeding do not cause the judge to be disqualified unless the judge is actually influenced and develops a personal bias or prejudice as a result. Advisory Opinions 89-391, 92-452, 95-574, 97-636, 98-686, 98-695, and 98-703. The Commission is of the opinion that the same holds true with regard to actions or statements by persons related to a party to a proceeding. To hold otherwise would allow litigants and their friends and relatives to control judicial proceedings whenever dissatisfied with the course of the proceeding.

Further, the bias necessary to disqualify a judge generally must arise from an extrajudicial source, and involve an opinion on the merits based on something other than what the judge has learned from participating in the case or a related case. Advisory Opinions 93-510, and 97-639.

Canon 3A(4) does not address the question of remedy when an ex parte communication inadvertently occurs. However, it does provide, with respect to ex parte consultation of an impartial expert, that the judge should, where justice requires, give notice to the parties and afford a reasonable opportunity to respond. The Commission is of the opinion that the judge acted appropriately in this case in disclosing the facts on the record, and that no further remedial action is required.

### REFERENCES

Alabama Advisory Opinions 89-391, 92-452, 93-510, 95-574, 97-636, 97-639, 98-686, 98-695, and 98-703.

Alabama Canons of Judicial Ethics, Canon  
3A(4).

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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](mailto:jic@alalinc.net).