

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: APRIL 30, 1999

ADVISORY OPINION 99-725

COMPLIANCE WITH ALA. CODE §12-24-2 (1975) AND DISQUALIFICATION DUE TO CAMPAIGN CONTRIBUTIONS.

ISSUES

I. Must a judge comply with the reporting requirements of ALA. CODE §12-24-2? **Answer:** The Commission is not authorized to determine the enforceability of a statute; this is a legal question the judge himself may address.

II. Must a judge recuse himself from a case in which an attorney or party has contributed \$2,000 or more to the judge's campaign for judicial office? **Answer:** No, except to the extent that §12-24-2 may have applicability.

FACTS

A judge ran as an incumbent in the November 1998 election. His new term of office began January 15, 1999. In November 1998, a party filed a motion to recuse on the ground that the attorney representing the opposing party had contributed \$3,000 to the judge's campaign, citing ALA. CODE §12-24-1, *et seq.* (1975) (Act No. 95-648).

Section 12-24-1 expresses the Legislature's intent to require recusal of a judge where there may be an appearance of impropriety due to receipt by the judge of a substantial campaign contribution from a party, an attorney, and other specified persons associated with a party in the case. Section 12-24-2(a) provides that certain judges must file a disclosure statement with the Secretary of State at least two weeks before the commencement of their term of office identifying campaign contributors in the

immediately preceding election and the amounts of their contributions; the stated consequence of failure to file is withholding of compensation by the Administrative Office of Courts. Section 12-24-2(b) provides that the Supreme Court must adopt rules requiring all attorneys in certain cases to serve certificates of disclosure on the other attorneys in such cases stating the amount of campaign contributions made by the party represented, counsel, and other described persons. Section 12-24-2(c) provides that when a circuit judge has received more than \$2,000 based on the information in any one such certificate of disclosure, any party who has filed a certificate of disclosure setting out an amount either less than \$2,000 or less than that of any opposing party may file a written notice requiring recusal of the judge. The triggering cumulative contribution amount from any party, counsel, and others specified is \$4,000 in the case of an appellate judge or justice.

At the hearing on the motion to recuse, a letter was presented from the Clerk of the Supreme Court. The letter states that the Supreme Court has not adopted rules implementing §12-24-2(b) because Act No. 95-648 has not been precleared by the Justice Department and, in the opinion of the Justice Department, is legally unenforceable until it is precleared. The Clerk's letter also expresses the opinion that the statute cannot be implemented even if it is precleared because problems in its drafting make it unworkable. A copy of a letter from the Justice Department to the Office of the Attorney General was enclosed with the Clerk's letter.

The judge requested an opinion from the Director of the Administrative Office of

Courts as to whether a) a judge must comply with the reporting requirements of §12-24-2(a), and b) a judge must recuse himself in cases in which an attorney or party has contributed \$2,000 or more to the judge's campaign. The Director of the Administrative Office of Courts responded that his office agreed that Act No. 95-648 is not legally enforceable until it is precleared, and that his office would not take any action for noncompliance with the statute's provisions until it is precleared.

DISCUSSION

The Judicial Inquiry Commission may only provide advisory opinions as to whether specified conduct proposed by a judge might constitute a violation of the Alabama Canons of Judicial Ethics. Therefore, the Commission cannot provide an opinion as to whether compliance with the reporting requirement in ALA. CODE §12-24-2(a) (1975) is legally required.

There is no provision in the Alabama Canons of Judicial Ethics that expressly requires compliance with §12-24-2(a). However, Canon 2A does require a judge to respect and comply with the law. Does Canon 2A require compliance with §12-24-2(a)? The Administrative Office of Courts has taken the position that Act No. 95-648 is unenforceable until it is precleared by the Justice Department, and the Director of the Administrative Office of Courts has stated that his office will take no action for noncompliance with the Act's provisions until it is precleared. The Alabama Supreme Court likewise has declined to adopt rules

implementing subsection 2(b) of the Act because the Act has not been precleared.¹

The Commission is not authorized to determine the validity or enforceability of Section 12-24-2, nor is it authorized to advise a judge that he is exempt from compliance with any statutory mandate, in the absence of an adjudication or other authoritative declaration of invalidity or unenforceability. In the opinion of the Commission, the enforceability of this statute is a legal question which the judge himself may address.

Your second question deals with whether a judge, separate and apart from the requirements of § 12-24-2, must recuse himself from a case in which an attorney or party has contributed \$2,000 or more to the judge's campaign for judicial office. The Commission has previously opined that the

¹Alabama's former Attorney General Jeff Sessions submitted the Act to the United States Department of Justice on March 14, 1996, for review, but on May 24, 1996, withdrew the submission, asserting that the Act contained no changes affecting voting subject to Section 5. The Justice Department acknowledged on July 23, 1996, the withdrawal of the submission but expressed disagreement with the Alabama Attorney General's reasoning and requested that Act No. 648 be resubmitted for review. In a letter from the Justice Department dated July 18, 1997, to Alabama's Attorney General, the view was reiterated that unless the State of Alabama receives a declaratory judgment from the United States District Court for the District of Columbia or the Attorney General interposes no objection to the specified changes, they are not legally enforceable.

mere receipt of campaign contributions from an attorney or party involved in a case does not cause disqualification. Advisory Opinions 98-698 and 96-607. Except to the extent that § 12-24-2 may have applicability, the Commission reaffirms those opinions. If there are other facts which would cause the judge's impartiality to reasonably be questioned, then recusal might be required under Canon 3C(1).

REFERENCES

Advisory Opinions 96-607 and 98-698.

Alabama Canons of Judicial Ethics, Canons 2A and 3C(1).

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.