

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 99-740

DISQUALIFICATION WHEN A FORMER CLIENT IS A PARTY ; DISQUALIFICATION WHEN THE JUDGE'S DOCTOR OR THE JUDGE'S SPOUSE'S DOCTOR IS A PARTY

also has seen this doctor as a patient for checkups and shots, but this doctor is not the judge's primary care physician. Another doctor named as a defendant is the judge's spouse's ob/gyn, who serves as the primary care physician for the judge's spouse.

ISSUES

I. Is a judge disqualified to hear a case if one of the parties was a client in unrelated matters when the judge practiced law before elevation to the bench? **Answer:** A judge is disqualified to hear such a case within two years after the judge's representation of the party ceased. Under the facts presented, the judge is not disqualified to hear a case involving the client in question after this two-year period ends.

II. Is a judge disqualified to hear a case if a party is either the judge's doctor or the judge's spouse's doctor? **Answer:** Disqualification depends on whether the circumstances in the particular case create a reasonable question as to the judge's impartiality.

FACTS

The judge is managing litigation involving a large number of cases which have been consolidated for pre-trial purposes; the defendants in these cases are drug manufacturers and pharmacies. Additional related cases have been recently filed which also name certain doctors as defendants. The judge represented one of these doctors for a period of about seven years before he became a judge. The representation consisted mainly of writing, drafting incorporation documents, and giving general legal advice. The judge

DISCUSSION

The Commission has previously held that a judge is not automatically disqualified from presiding over cases involving former clients whom the judge represented in unrelated matters, but that a judge may be prohibited from presiding over a case involving a former client whom the judge represented in an unrelated matter where "his impartiality might reasonably be questioned" under Canon 3C(1). Advisory Opinions 91-431, 93-481, and 97-658. In Advisory Opinion 91-431, the Commission listed a number of factors to consider in determining whether a judge's impartiality might reasonably be questioned when a former client in unrelated matters appears: the nature of the prior and present cases; the nature of the prior representation; and the frequency and duration of, and the time passed since, the prior representation.

"Recusal is required under Canon 3C(1) when 'facts are shown which make it reasonable for members of the public or a party, or counsel opposed to question the impartiality of the judge.' *Acromag-Viking v. Blalock*, 420, So.2d 60, 61 (Ala. 1982). See, also, *Wallace [v. Wallace]*, 352 So.2d 1376, 1379 (Ala.Civ.App. 1977)]. Specifically, the Canon 3C(1) test is: 'Would a person of ordinary prudence in the judge's position knowing all of

the facts known to the judge find that there is a reasonable basis for questioning the judge's impartiality?' Thode, *The Code of Judicial Conduct - The First Five Years in the Courts*, 1977 Utah L.Rev. 395, 402."

In re Sheffield, 465 So.2d 350, 355-356 (Ala. 1984).

Upon further reflection on this issue, it is the opinion of the Commission that a judge is disqualified from hearing cases in which former clients in unrelated matters appear for a period of two years from the time the representation ceases. A two-year period is observed in the federal courts under an interpretation of the Code of Conduct for United States Judges. Compendium [of opinions by the Committee on Codes of Conduct] §3.6-5(b) (1999). The Commission is of the opinion that this period of disqualification is appropriate under the Alabama Canons of Judicial Ethics and should be adopted for Alabama judges.

Having considered the facts presented in this case, the Commission concludes that the judge is not disqualified on the basis of his prior representation of the defendant in question after this two-year period ends. The prior representation does not appear to have been either so extensive or of such a nature as to create a reasonable question as to the judge's impartiality after a lapse of a two-year period. *Compare*, Advisory Opinion 97-658.

The Commission has not previously addressed the issue of disqualification when a party is the judge's or the judge's spouse's doctor. The judge is disqualified, of course, under Canon 3C(1)(a) if the judge has a personal bias or prejudice concerning a party for any

reason. None of the other specific instances stated in Canon 3C(1) as grounds of disqualification appear to have any potential application. Thus, the question is whether the physician/patient relationship between a party and the judge or the judge's spouse causes a reasonable question as to the judge's impartiality, requiring disqualification under the general provision in Canon 3C(1).

The reasonable person/appearance of impropriety test stated in Canon 3C(1) sometimes disqualifies judges who have no actual bias. *In re Sheffield*, 465 So. 2d at 357. Having carefully considered the question, the Commission is of the opinion that a person of ordinary prudence knowing all the circumstances could conclude there is a reasonable basis for questioning the impartiality of a judge when a party to individual litigation is currently the judge's or the judge's spouse's doctor. However, the impartiality of the judge is not so clearly questionable where a family doctor is a single defendant in complex litigation involving hundreds of parties. This is especially true in a case such as the present one in which a very large number of doctors may eventually be named as defendants. It should also be noted that neither the parties nor their counsel have raised concerns about the matter.

It is the opinion of the Commission that the judge should disclose the facts to the parties and their counsel. The Commission does not believe the judge's impartiality may be reasonably questioned under the facts presented.

REFERENCES

Alabama Advisory Opinions 91-431, 93-481, and 97-658.

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

In re Sheffield, 465 So.2d 350 (Ala. 1984).

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.