

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: APRIL 26, 2001

ADVISORY OPINION 01-776

DISQUALIFICATION ON ALLEGATION OF FRIENDSHIP WITH, AND/OR DUE TO CAMPAIGN CONTRIBUTIONS FROM, POLITICAL AFFILIATION OF, AND LAW SCHOOL ATTENDED BY AN ATTORNEY IN THE CASE

ISSUES

Is a circuit judge disqualified to hear a divorce action due to:

1. An unfounded allegation that the judge is close friends with one of the attorneys in the case? **Answer:** No.
2. The same attorney and his law firm each having made a \$100 contribution to the judge's 1994 campaign fund? **Answer:** No.
3. The judge and the same attorney both being Democrats? **Answer:** No.
4. The judge and the same attorney both having graduated from the University of Alabama Law School? **Answer:** No.
5. The totality of the above circumstances? **Answer:** No.

FACTS

A circuit judge has been asked to recuse himself from a divorce action.

The defendant was allegedly told by the plaintiff that there is no way he will prevail because her attorney is a "good friend" of the judge. The plaintiff denies having said this, and counsel for plaintiff denies having made

such a statement to his client. The judge considers plaintiff's counsel to be an excellent attorney, but he does not consider him a "good friend." They have no social relationship; they have never been to each other's homes and have never engaged in any recreational activity together.

Plaintiff's attorney contributed \$100 to the judge's 1994 election campaign fund, and the law firm in which he is a partner contributed another \$100 to the judge's 1994 campaign fund. Another partner in the same firm contributed to the judge's opponent in the 1994 election.

The defendant also alleges as grounds for recusal that both the judge and plaintiff's counsel are Democrats, and that both are graduates of the University of Alabama School of Law.

DISCUSSION

The inquiring judge notes that prior Advisory Opinions 96-607, 98-698, and 99-725 have indicated that mere receipt of campaign contributions such as those at issue does not cause disqualification, but that Advisory Opinion 99-725 states there may be "other facts" which would cause the judge's impartiality to reasonably be questioned. He specifically asks for guidance as to whether the additional facts in this case bring his impartiality into reasonable question.

Under the Alabama Canons of Judicial Ethics, disqualification is required when the judge's "impartiality might reasonably be questioned." Canon 3C(1). The test to determine whether a judge's impartiality might reasonably be

questioned 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?” *In re Sheffield*, 465 So. 2d 350, 356 (Ala. 1984).

Consistent with its prior opinions on the subject, the Commission finds that the campaign contributions at issue do not present a reasonable basis to question the judge’s impartiality. Likewise, a judge’s impartiality cannot be reasonably questioned merely because the judge and an attorney in the case belong to the same political party.

As the Commission has previously observed, judges necessarily will have associations and even friendships with attorneys and parties coming before their courts, and a judge is not disqualified for such ordinary relationships with fellow citizens. Whether or not a judge is disqualified based on friendship depends on how personal the relationship is between the judge and the person connected to the lawsuit. Advisory Opinions 95-541, 99-722, 99-729, and 00-752. *See also*, J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics*, § 4.15 at 137 (3rd ed. 2000); and *Ex parte Hill*, 508 So.2d 269, 272 (Ala. Civ. App. 1987). The type of close personal friendship that would require disqualification under Canon 3C(1) is not present in this case. *Compare, Bryars v. Bryars*, 485 So. 2d 1187 (Ala. Civ. App. 1986). “The fact that one of the parties before the court is known to and thought well of by the judge is not sufficient to show bias. *Duncan v. Sherrill*, 341 So. 2d 946 (Ala. 1977).” *Murphy v. State*, 455 So. 2d 924, 929 (Ala. Cr. App. 1984).

The statement allegedly made by the plaintiff concerning friendship between the judge and

an attorney in the case amounts to an accusation that the judge will act in a biased fashion. Thus, the Commission finds it appropriate to also observe that it has long held that a judge is not disqualified on the basis of accusations by litigants or their attorneys unless 1) the judge develops a personal bias or prejudice concerning a party as a result, or 2) special circumstances exist such that the making of the particular complaint actually causes the judge’s impartiality to be reasonably questionable. *See* Advisory Opinion 00-761 and prior opinions cited therein. As the Commission commented in Advisory Opinion 85-235, “[I]t is difficult to imagine an independent judiciary governed merely by . . . unfounded accusations.” The accusation made in the present case does not itself create a reasonable question as to the judge’s impartiality. Thus, the Commission is of the opinion that the judge is not disqualified unless he has actually been influenced and has developed a personal bias or prejudice concerning a party.

The Commission also is of the opinion that a judge’s impartiality may not reasonably be questioned on the ground that he and an attorney in the case both attended the same law school. *See*, Advisory Opinion 96-613 (the judge and a party both attended the Air Force Academy); and Advisory Opinion 95-541 (the judge and a party attend the same Sunday school class).

Finally, upon consideration of the totality of the circumstances in this case, the Commission finds no reasonable question as to the judge’s impartiality. Thus, the Commission concludes that, unless the judge has developed a personal bias or prejudice, the canons do not require his disqualification.

REFERENCES

Alabama Advisory Opinions 85-235, 95-541, 96-607, 96-613, 98-698, 99-722, 99-725, 99-729, 00-752, and 00-761.

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

Bryars v. Bryars, 485 So. 2d 1187 (Ala. Civ. App. 1986).

Ex parte Hill, 508 So.2d 269 (Ala. Civ. App. 1987).

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

J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics*, § 4.15 at 137 (3rd ed. 2000)

Murphy v. State, 455 So. 2d 924 (Ala. Cr. App. 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.