

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 01-783

DISQUALIFICATION DUE TO CAMPAIGN CONTRIBUTIONS AND/OR POLITICAL ENDORSEMENT

ISSUES

Is a judge disqualified to hear a case in which a defendant is the Vice-Chairman of Minority Affairs for the Alabama Democratic Party and Chairman of the Alabama Democratic Caucus on account of political endorsement by the Caucus and/or campaign contributions from the Party and the defendant's attorney?

Answer: If the judge feels he can impartially preside in the case, the Alabama Canons of Judicial Ethics do not require his disqualification.

FACTS

A judge has been asked to recuse himself from a case in which a defendant is the Vice-Chairman of Minority Affairs for the Alabama Democratic Party and Chairman of the Alabama Democratic Caucus because: (1) the Party contributed \$259,700 to an unsuccessful campaign by the judge last year for a seat on the Court of Civil Appeals; (2) the attorney for the defendant in question contributed \$600 to the campaign; and (3) the Caucus endorsed the judge for election in the campaign.

DISCUSSION

The Commission has consistently taken the position that receipt of campaign contributions from a party or an attorney is not sufficient by itself to disqualify a judge from sitting in a proceeding in which the party or attorney appears. This is based on Canons 3C and 7 of the Alabama Canons of Judicial Ethics.

Canon 3C, which addresses disqualification, must be read in light of Canon 7, which governs political activities. Canon 7 recognizes that judges in Alabama are subject to nomination and election through political campaigns. It is manifest that a judge or judicial candidate must accept campaign contributions in order to finance a campaign for judicial office. It would devastate the court system if judges were disqualified in all proceedings in which a person appeared who had made legal campaign contributions to the judge. Thus, the Commission has concluded that disqualification is not required on account of campaign contributions unless additional special circumstances exist that cause the judge's impartiality to be reasonably questionable based on the totality of the circumstances in the particular case. Advisory Opinions 84-213, 84-227, 99-725, and 99-729.

The Commission has likewise been of the opinion that a judge is not disqualified to hear a case merely because parties or their counsel have otherwise supported or opposed the judge's candidacy for judicial office, but that the existence of other factors might cause a judge's impartiality to be reasonably questionable. Advisory Opinions 84-213, 91-410, 93-511, 95-578, 98-716, and 99-717. In Advisory Opinion 98-716, attorneys in the case had endorsed the judge in a newspaper advertisement just before the election. In Advisory Opinion 99-717, the local district attorney had endorsed the judge's candidacy in a television ad.

"All ethics advisory panels which have addressed this question agree that *per se* disqualification is unnecessary. Some opinions, however, caution that a judge should

look at each case where an endorser appears to determine if factors beyond the mere public support of the judge's candidacy militate in favor of disqualification." J. Shaman, *et al.*, *Judicial Conduct and Ethics*, §11.12 at 391 (3rd ed. 2000).

Certainly it would be a problematic special circumstance for a judge to preside in a case where one of the litigants personally had contributed a sum as large as \$259,700 to the judge's recent campaign. Without regard to whether ALA. CODE, § 12-24-1, *et seq.*, may or may not be applicable to such a contribution, it is obvious that such a circumstance would give rise to an appearance of impropriety. That situation, however, is not present here. The campaign contribution here at issue was not from the litigant but from a political party of which the litigant was an officer. This, without more, does not require disqualification.

A judge is, of course, disqualified in any proceeding in which he or she has a personal bias or prejudice concerning a party for any reason. Canon 3C(1)(a). Assuming that the judge feels that he is able to fairly preside in the case, it is the opinion of the Commission that he is not disqualified.

REFERENCES

Alabama Advisory Opinions 84-213, 84-227, 91-410, 93-511, 95-578, 98-716, 99-717, 99-725, and 99-729.

Alabama Canons of Judicial Ethics, Canons 3C(1), 3C(1)(a) and 7.

J. Shaman, *et al.*, *Judicial Conduct and Ethics*, §11.12 (3rd ed. 2000).