

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 03-829

DISQUALIFICATION OF MUNICIPAL JUDGE TO HEAR CHARGE AGAINST CITY EMPLOYEE

ISSUE

May a municipal judge hear a misdemeanor charge involving the alleged assault of a former city employee by a current city employee at City Hall? **Answer:** Yes, if the judge feels he can act impartially in the matter.

FACTS

A part-time municipal judge has been assigned a misdemeanor assault case. The warrant was signed by a former city employee against a current city employee over an incident that was alleged to have occurred at City Hall. The defendant had been the former employee's supervisor. The judges for the municipal court are appointed by the mayor. The former employee alleges the judge is disqualified because he is appointed by the mayor and the defendant is still employed by the city.

DISCUSSION

Canon 3C(1) states that a judge is disqualified whenever the judge's "impartiality might reasonably be questioned." This general provision is followed by subsections listing some specific circumstances under which a judge's impartiality might reasonably be questioned.

Canon 3C(1)(a) provides, in pertinent part, that a judge is disqualified if he has a personal bias or prejudice concerning a party. Under this provision, a judge would be disqualified to hear a case if he or she determined that he or she could not be impartial but rather would be affected by the fact that the defendant is a city employee and the judge is appointed by the mayor.

None of the other specific subsections of Canon 3C(1) apply. Thus, the only remaining question is whether the judge is disqualified under the general disqualification provision.

"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."

Matter of Sheffield, 465 So.2d 350, 355-356 (Ala. 1984). The question under Canon 3C(1) is not whether the judge is impartial in fact, but rather whether another person, knowing all of the circumstances, might reasonably question the judge's impartiality. *Ex parte Duncan*, 638 So.2d 1332, 1334 (Ala. 1994).

The Commission finds no reasonable question as to the judge's impartiality under the facts presented. Thus, it is of the opinion that the judge is not disqualified to hear the subject case so long as he feels that he can act impartially in the matter.

REFERENCES

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

Ex parte Duncan, 638 So.2d 1332 (Ala. 1994).

Matter of 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, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.