

# JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JANUARY 30, 2004

ADVISORY OPINION 04-833

## DISQUALIFICATION DUE TO PRIOR REPRESENTATION OF PARTY'S SPOUSE AND/OR DUE TO SENTENCE IMPOSED ON THE PARTY IN A PREVIOUS CASE

### ISSUE

Is a judge disqualified to hear a criminal case because he represented the defendant's ex wife in her unrelated divorce from the defendant thirty years ago and/or because the judge imposed the maximum sentence available in a prior criminal case against the defendant? **Answer:** No.

### FACTS

The defendant in criminal cases currently assigned to a particular circuit judge has filed a motion for recusal on the bases that (1) the judge represented his ex wife in her divorce proceeding against him thirty years ago; and (2) the judge has, in a previous case, imposed the maximum sentence available against him, contrary to the customary sentence for the offense involved in that case. It is argued in the motion that the harshness of the sentence in the other case presents at least a reasonable presumption that the trial judge bears ill-will towards the defendant and/or is otherwise disinclined to equitably rule upon matters of law or procedure pertinent to him and his defense. The State's response to the recusal motion states that the sentences in six of the seven other cases on which the defendant relies in arguing that his sentence was uncommonly harsh were entered pursuant to plea agreements.

The defendant's divorce was done by agreement of the parties and was uncontested. The judge has no independent recollection of the divorce action or the parties to it. The judge bears no ill will towards the defendant and is not "otherwise disinclined to equitably rule upon matters of law or procedure pertinent to him or to his defense."

### DISCUSSION

Canon 3C(1) provides generally that a judge should disqualify himself in any proceeding in which his "impartiality might reasonably be questioned." After this general provision, specific circumstances under which a judge is presumptively disqualified are stated in subsections (a) through (d).

The Commission assumes from the facts presented that the thirty-year-old divorce is not related to the current criminal charges. See Canon 3C(1)(b). None of the other subsections to Canon 3C(1) apply. Thus, the issue is whether the judge is disqualified under the general provision in Canon 3C(1). The test under Canon 3C(1) 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). 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).

Where a judge has represented a person in an unrelated case many years ago, the judge is not disqualified to hear a case in which that person is a party absent the existence of either personal bias or prejudice, or additional facts creating a reasonable basis for questioning the judge's impartiality. Advisory Opinion 99-740. A judge is likewise not disqualified to hear a case on the mere basis that he represented a party opponent to the defendant many years previously.

The mere fact that a judge previously imposed the maximum available sentence against a defendant also does not create a reasonable question as to the judge's impartiality.

It is the opinion of the Commission that the judge is not disqualified under the facts presented.

**REFERENCES**

Advisory Opinion 99-740.

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

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

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