

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 04-835

## DISQUALIFICATION DUE TO PREVIOUS JUDICIAL INVOLVEMENT AND/OR PRIOR RELATIONSHIP WITH A PARTY

### ISSUE

Is a circuit judge disqualified to hear an action in which a municipality is the defendant due to any of the following circumstances from the period before he became a circuit judge:

- (a) he was a substitute judge for the municipality for a period of time during which he may have heard related cases;
- (b) he chaired a municipal court task force at the request of the city council which did not address matters at issue in the pending case; and
- (c) he investigated an unrelated matter that occurred at the municipal court at the request of the city council?

**Answer:** No.

### FACTS

A circuit judge has been assigned a case in which class action status is sought that demands injunctive and monetary relief against a city on the ground that it had, through its municipal court, enforced an unlawful and unconstitutional criminal charge under a city ordinance which has since been amended to conform with Alabama law. Plaintiffs are said to be persons who were arrested and pleaded guilty to allegedly illegal charges under the ordinance, and who were consequently fined and taxed court costs.

Before becoming a circuit judge, the assigned judge was a substitute municipal judge for the defendant city for several years, including at least some of the time encompassed by the allegations in the complaint. He only served a few hours each year and was paid at an hourly rate. He does not recall having handled any

case covered by the complaint, but he cannot say that he never did since the named plaintiff alleges there are more than 2,000 class members.

The city council appointed the judge to chair a Municipal Court Task Force in 2002, before he became a circuit judge. The judge undertook this responsibility as a civic activity. The task force proposed changes to the municipal judge position and it discussed the structure and operation of the municipal court; it did not address ordinances or the enforcement of ordinances.

Within the same time frame, the city council asked the judge to conduct an investigation of a matter that occurred at the municipal court. This was also before he became a circuit judge and also was undertaken as a civic activity. The investigation involved a municipal employee and had no connection to any cases or proceedings.

### DISCUSSION

The first circumstance presented involves the possibility that the judge may have had judicial involvement in a prior related case. In such situations, a question often arises as to whether the judge is disqualified under Canon 3C(1)(a) due to either personal knowledge of disputed evidentiary facts concerning the pending proceeding or bias concerning a party. In Advisory Opinion 98-702, the Commission wrote:

Recusal is not required on account of a judge having prior familiarity with the case derived from having previously tried the same case or a related case. Advisory Opinions 89-375, 93-510, and 93-511. "The rule against prior personal knowledge only applies to knowledge garnered from extrajudicial sources. Knowledge about matters in a proceeding that has been obtained by a judge within the proceeding itself or

within another legal proceeding is permissible and does not call for disqualification.” J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics, §4.10 at 113 (1995).

Further, the bias necessary to disqualify a judge generally must arise from an extrajudicial source, and involve an opinion on the merits based on something other than what the judge has learned from participating in the particular case or a prior case. See Advisory Opinions 83-188, 89-375, 92-449, 93-510, and 97-639. The mere fact that a judge has heard and made factual findings in a prior related case is not ground for disqualification. Advisory Opinions 83-188, 86-267, 89-350, 89-375, 92-449, 97-639, and 98-685.

The fact that a judge has heard evidence and rendered a decision adverse to a party in a former proceeding does not disqualify the judge to try a later case involving the same issue. Advisory Opinion 93-510, citing *Lindsey v. Lindsey*, 229 Ala. 578, 580, 158 So. 522 (1934); and Advisory Opinion 00-764.

The inquiring judge does not recall having heard a case related to the pending one. Moreover, the prior cases in the municipal court appear to have involved guilty pleas rather than contested trials. In any event, it is clear from the foregoing that he would not be disqualified from sitting in the pending proceeding even if he did recall having tried a related case. The Commission is of the opinion that the judge is not disqualified on account of the possibility that he may have sat as the judge in a case at issue in the pending proceeding.

The other two circumstances presented involve the judge, prior to his having become a circuit judge, having accepted requests by the city council to assist it with two matters. Both occasions were about two years ago. Neither involved employment, as an attorney for the city or otherwise, and neither was related to the pending litigation.

These two circumstances do not involve the potential applicability of any of the specific subsections of Canon 3C(1). Thus, the question is whether they create a reasonable question as to the judge’s impartiality under the general provision in Canon 3C(1). The test under the general Canon 3C(1) provision 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 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).

It is the opinion of the Commission that the prior occasions of service to the city council described do not create a reasonable question as to the judge’s impartiality, whether considered individually, in combination with each other, or in combination with service as a substitute municipal judge. The facts provided do not suggest such a close relationship as to cast reasonable doubt on the judge’s impartiality in the pending litigation. See, Advisory Opinion 98-700; *compare*, Advisory Opinion 81-99.

#### REFERENCES

Advisory Opinions 81-99, 93-510, 98-700, 98-702, and 00-764.

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

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

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

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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.