

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: January 26, 2007

ADVISORY OPINION 07-875

1. DUTY TO INFORM PARTIES OF POSSIBLE JUROR MISCONDUCT.
2. DISQUALIFICATION DUE TO THE JUDGE'S PERSONAL KNOWLEDGE.

ISSUES

1. If, while a motion for new trial is pending, a judge learns of possible juror misconduct involving the trial of the case, is the judge required to disclose the facts to the parties to the proceeding? **Answer:** Yes, under the duties imposed in Canon 1 and Canon 3 of the Alabama Canons of Judicial Ethics, a judge is required to disclose information of possible juror misconduct to the parties.
2. Does the fact that the judge has learned of possible juror misconduct disqualify him from hearing the motion for new trial? **Answer:** No, under the facts presented, the judge has information only of possible juror misconduct and is not disqualified from deciding the matter if, after notice, either or both of the parties choose to raise the issue.

FACTS

After the conclusion of a criminal jury trial and pending a motion for new trial, the trial judge learned, through a casual conversation with someone unrelated to the case, that one of the jurors who served on the jury may not have been qualified by residence to serve on the jury. The judge is reasonably certain, subject to proof, that the juror is a nonresident of the trial jurisdiction. The judge does not know if the parties are aware of this possible disqualification.

DISCUSSION

1. During trial proceedings it is the duty of

the trial judge to conduct the proceedings, to maintain order, and to see that the proceedings are conducted according to law and appropriate procedure. To this end, during the proceeding, when possible juror misconduct comes to the attention of the judge, the judge should inform the parties so they may take appropriate action if such action is required. In carrying out these duties, the judge is required by Canon 3 to perform the duties of his office impartially and diligently and under Canon 3A(4) to accord all parties full right to be heard. In addition, the judge is required by Canon 1 to maintain high standards of conduct so that the integrity and independence of the judiciary may be protected. Where the judge learns that there may have been possible juror misconduct in a proceeding that has concluded to a verdict and the information is, or may be, unknown to the parties, failure to disclose that conduct may affect the rights of parties to the proceeding, especially their rights to be heard. By failing to disclose the information, the judge would be perceived as favoring the successful party to the litigation, thereby abandoning his duty to maintain the impartiality and independence of the judiciary.

2. Disqualification is governed by Canon 3C. That canon requires disqualification in any proceeding where the judge's "disqualification is required by law or his impartiality might reasonably be questioned" Pertinent to this discussion, disqualification is required where a judge has personal knowledge of disputed evidentiary facts. Canon 3C(1)(a). Even if there is no personal knowledge of such facts, the judge is disqualified if "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." *Matter of Sheffield*, 465 So.2d 350 (Ala 1984).

In the instant case, the judge learned facts which led him to believe there *may have been* juror misconduct in the proceeding. The fact of such misconduct is yet to be proven, and the judge does not have personal knowledge that the suspected facts can be shown to be true. That issue remains a matter for the parties to prove and for the judge to decide based on the proof offered. In addition, under these facts, even though the judge is reasonably sure that juror may actually live outside the county, there is no indication that the judge is certain that the current residence is the legal residence for juror residency purposes. In this instance, the judge does not have personal knowledge of a disputed evidentiary fact, and it is not reasonable that, given the disclosure of the information to the parties, a person of ordinary prudence would question the judge's impartiality.

REFERENCES

Alabama Canons of Judicial Ethics, Canons 1,3, 3A(4), 3C, 3C(1)(A).

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.