

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: June 15, 2007

ADVISORY OPINION 07-883

DISQUALIFICATION – THE DEFENDANT WAS A PARTY OPPONENT TO A PARTY REPRESENTED BY THE JUDGE IN A PREVIOUS UNRELATED CASE

ISSUE

Is a judge disqualified from a defendant's criminal case of public intoxication if, two years earlier, the judge represented the defendant's former spouse in a divorce action wherein one of the issues was the defendant's alcohol abuse and/or mental illness? Answer: Yes, a judge is disqualified pursuant to a former adversarial relationship with the defendant where no circumstances alleviate any appearance of partiality arising from the former relationship.

FACTS

A defendant charged with public intoxication has filed a motion to recuse the part-time municipal judge on the ground that, approximately two years earlier, the judge represented the defendant's former wife in a divorce action against the defendant. One of the issues in the divorce was whether the defendant was abusing alcohol and/or was mentally ill.

DISCUSSION

Canon 3C(1) of the Alabama Canons of Judicial Ethics provides generally that a judge should disqualify himself in any proceeding in which his "impartiality might reasonably be questioned."

Cases involving former party opponents are generally governed by

the Canon 3C(1) standard of whether the judge's impartiality might reasonably be questioned. In Advisory Opinion 88-349, the Commission held under Canon 3C(1) that a judge was disqualified from sitting in a child custody case in which one of the parties had been a defendant in an unrelated child custody hearing in which the judge had represented that party's then spouse. The judge had had an adversarial relationship with a present party as an attorney in a previous unrelated case of the same nature; the Commission decided that under these particular circumstances a person of ordinary prudence might reasonably question the judge's impartiality.

Advisory Opinion 95-545.

Particular circumstances may alleviate any appearance of partiality arising from a former adversarial relationship with a party to a current proceeding, such as where the original adversarial relationship is remote in time, the parties insist in writing that the judge hear the case, and the judge is not certain that the litigant participated in the prior matter. *See, e.g.,* Advisory Opinion 04-833 (passage of 30 years since relationship existed); 91-422 (all three factors present); 89-352 (passage of time and consent in writing for judge to hear the case). However, such circumstances are not present here. Thus, the Commission finds that the judge is disqualified under Canon 3C(1) because a person of ordinary prudence might reasonably question the judge's impartiality.

In this instance, the Commission has

considered only the question of the reasonable appearance of bias. Of course, in a situation involving a prior party opponent, disqualification would occur under the terms of Canon 3C(1)(a) if the judge has a personal bias or prejudice concerning a former party opponent or personal knowledge of the disputed evidentiary facts concerning the proceeding. Advisory Opinion 95-545.

In finding that the judge is disqualified under Canon 3C(1), the Commission notes that a ruling on a recusal motion is a legal matter for the judge, not the Commission, to make, and whether a judge is disqualified depends on the factual circumstances involved. We hope that this opinion provides the guidance you sought as to application of the Alabama Canons of Judicial Ethics.

REFERENCES

Advisory Opinions 04-833, 95-545, 91-422, 89-352, and 88-349.

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

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.