

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 09-898

DISQUALIFICATION: CASE SEEKING DECLARATORY JUDGMENT RE CONSTITUTIONALITY OF STATUTE AND PARTY-DEFENDANT IS STATE SUPREME COURT CHIEF JUSTICE WHO HAS APPOINTED ASSIGNED JUDGE TO COMMITTEE

ISSUE

Should a circuit judge disqualify himself from presiding in a case where the Alabama Supreme Court chief justice is a party-defendant and the inmate-plaintiff is seeking declaratory and injunctive relief, on the alleged unconstitutionality of a statute? **Answer:** No. Should the judge disqualify if the chief justice has appointed him to a committee? **Answer:** No.

FACTS

The inmate-plaintiff has filed a case seeking declaratory and injunctive relief on the allegation that a statute is unconstitutional. He does not seek monetary damages. One of the party-defendants is the Alabama Supreme Court chief justice, in her official capacity. She has appointed the assigned judge to a committee.

DISCUSSION

In Advisory Opinion 92-442, the Commission determined that a judge should not disqualify in a civil suit in which the state chief justice and an associate justice were seeking monetary damages. The Commission explained, as follows:

The suggestion that you are disqualified because the chief justice and an associate justice of the Alabama Supreme Court are plaintiffs in the case and because of the broad supervisory and administrative powers possessed by the chief justice and the Supreme Court is without merit. If this contention were accepted, then every other judge in Alabama who was not a justice on

the Supreme Court would be disqualified any time any member of the Supreme Court was involved in a civil suit. If such were true, then the “rule of necessity” would apply. “If no judge can be found who possesses the requisite degree of impartiality in regard to a particular case, the rule of necessity dictates that the original judge assigned to the case need not be disqualified despite his or her partiality.” J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics* § 5.03 (1990).

Moreover, the mere fact that a judge is a party or that the legality of actions taken by a judge in her official capacity is questioned does not create a reasonable question as to the impartiality of the judge to whom the case is assigned, i.e., a sufficient cause for disqualification under Canon 3C(1). Advisory Opinion 98-701.

Special circumstances, however, may require disqualification, such as a social, financial, “non-judicial,” or extraordinary relationship between the party-judge and the judge to whom the case is assigned; the nature of the particular case; or its potential impact on future working relations between the party-judge and the judge to whom the case is assigned. Advisory Opinion 98-701. For example, in advising the judges of the Court of Civil Appeals to disqualify from participating in the action of a title company suing the chief justice for breach of contract, the Commission in Advisory Opinion 95-587 undoubtedly considered the particulars of the case, i.e., an action for monetary damages from the chief justice, and the future working relations of the judges and the chief justice. The additional factor proposed here – that the chief justice appointed the judge to a committee – does not alone generate any appearance of impropriety.

Under the facts provided, the Commission finds no basis for disqualification.

REFERENCES

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

Alabama Advisory Opinions 98-701, 95-587, and 92-442.

J. Shaman, S. Lubet, J. Alfini, *Judicial Conduct and Ethics* § 5.03 (1990).

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 19 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.