

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 22-953

DISQUALIFICATION: PART-TIME JUDGE'S AND JUDGE'S LAW PARTNER'S CLIENTS

DISQUALIFICATION: DEFENDANT WAS A PARTY OPPONENT TO A PARTY REPRESENTED BY THE JUDGE IN AN UNRELATED CASE

ISSUES

Is a part-time municipal judge disqualified to hear a case if the defendant is a past or current client of the judge or the judge's law partner in an unrelated matter?

Answer: Yes. A judge is disqualified from a case where the defendant is a current client of the judge or the judge's firm or a former client of the judge or the judge's firm, if the representation took place within two years of the date that the defendant appears before the judge.

Is a part-time municipal judge disqualified from presiding over a case involving a defendant who was a party in an unrelated proceeding in which the judge acted as the attorney for the Alabama Department of Human Resources (DHR)?

Answer: No. However, the judge is disqualified from any case where the defendant is currently a party opponent of DHR in a proceeding where the judge serves as the attorney for DHR.

Is a part-time municipal judge, who also represents DHR in the judge's county, disqualified from presiding over a case involving any defendant who was a party in any

proceeding in which DHR was a party?

Answer: No.

FACTS

A newly appointed part-time municipal judge maintains a private law practice with a law partner in which the judge is actively engaged in the representation of clients. The judge also represents the Alabama Department of Human Resources (DHR) in that county. The judge's representation of DHR is limited only to those matters that are referred to her by DHR. In other words, the judge does not represent DHR in matters that are referred to other contract attorneys in the judge's county.

DISCUSSION

I.

A part-time judge is disqualified from presiding over a case in which a current client of the judge appears. *See* Advisory Opinion 97-631. A judge's disqualification is required under Canon 3C(1)'s general disqualification provision if the judge's impartiality might reasonably be questioned. The test for determining whether a judge is disqualified under Canon 3C(1)'s general 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); *see also Ex parte Duncan*, 638 So. 2d 1332, 1334 (Ala. 1994). In considering the test for disqualification laid out in *Sheffield*, a reasonable person most certainly would conclude that there is a reasonable basis for questioning the judge's impartiality when asked to preside over a case involving a current client of the judge. In fact, the publication, *An Ethics Guide for Part-Time Lawyer Judges*, quotes the following:

It is axiomatic that an attorney is an advocate, whose primary duty is to advance and protect his client's interests. In contrast, a judge's primary duty is to serve as a neutral and disinterested referee and to render a fair and impartial ruling. For a judge in an active and ongoing attorney-client relationship to preside over and decide a case involving his client brings these two duties into irreconcilable conflict.

Cynthia Gray, *An Ethics Guide for Part-Time Lawyer Judges* 24 (Am. Judicature Soc'y 1999) (quoting *Public Reprimand of Bronson* (Tex. State Comm'n on Jud. Conduct Jan. 19, 1995)). Thus, a part-time municipal judge is disqualified from presiding over a matter involving a current client, even if that matter is unrelated to the matter for which the judge is representing the client.

Likewise, a part-time judge is disqualified from a case in which a

current client of the judge's law partner or firm appears, even if the judge does not have any involvement in the representation of that client. "[A] firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated." Ala. R. Prof. Conduct 1.10 cmt. Because the part-time judge owes a duty of loyalty under the Alabama Rules of Professional Conduct to all clients of the judge's firm, even those represented solely by the judge's law partner, a reasonable person could find a reasonable basis for questioning the judge's impartiality in a case in which a current client of the judge's law partner appears. Therefore, a judge is also required to disqualify from a case in which a current client of the judge's law partner appears.

On the other hand, in cases where a former client of the judge appears, the general rule is that a judge is disqualified from hearing a case involving a former client for a period of two years after the representation ceases, absent some extraordinary circumstance. *E.g.*, Advisory Opinion 13-917 at 5. The Commission has consistently advised that a two-year period following the termination of the judge's representation of the client is an appropriate measure for determining whether a reasonable question as to the judge's impartiality exists,

although the Commission has recognized that there may be some unusual or extraordinary circumstances where the period for which a judge's impartiality might reasonably be questioned expires before or extends beyond two years. *E.g.*, Advisory Opinion 13-916.

Of course, if a former client appears before a judge in a matter in which the judge previously served as an attorney, then the judge is automatically disqualified under Canon 3C(1)(b). *See* Advisory Opinion 13-917 at 3-4. This same rule applies where a former client of a law partner or other member of the judge's firm appears, if the judge was associated with the law partner or firm during the representation. *Id.* at 4; *see also* Canon 3C(1)(b).

Similarly, a part-time judge should consider the surrounding circumstances in determining whether the judge is required to disqualify from a case in which a former client of the judge's law partner appeared. The same duty of loyalty described in the Comment to Rule 1.10 of the Alabama Rules of Professional Responsibility is imputed to the judge, even if the judge was not actively involved in the representation of the former clients of the judge's law partner. However, as discussed above, the period of time that a judge must disqualify from cases involving a former client necessarily depends on an analysis of the particular circumstances surrounding the case currently

pending before the judge, the previous case where the judge represented the client, and the extent of the judge's representation of the client. The fact that a litigant appearing before the judge was a former client of the judge's law partner is a factor to be considered in determining whether there is a reasonable basis for questioning the judge's impartiality.

Therefore, a part-time judge is disqualified from cases in which a current client of the judge or the judge's law partner appears. Likewise, a part-time judge may, depending on the specific circumstances of the case, be disqualified from cases in which a former client of the judge or the judge's law partner appears.

II.

Another circumstance where a judge's disqualification may be required is where a party opponent of a party that was previously represented by the judge in an unrelated matter appears as a defendant. In Advisory Opinion 95-547, the Commission explained:

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 8[8]-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.

However, the Commission has recognized that there may be additional circumstances which alleviate the reasonable appearance of partiality that arises from a prior, formal adversarial relationship with a party. Advisory Opinions 13-917 and 07-883.

In Advisory Opinion 07-883, the Commission advised a part-time municipal judge that the judge was disqualified from a defendant's public intoxication case where the judge had previously represented the defendant's former spouse in a divorce action where the defendant's abuse of alcohol was at issue. The Commission explained that, like in Advisory Opinion 88-349, the natures of the case currently before the judge and the case in which the judge had previously represented the defendant's former spouse as an attorney were similar in that both

cases touched on the issue of the defendant's abuse of alcohol.

Based on the foregoing opinions, a judge, absent the presence of some alleviating circumstances, is disqualified from cases involving a party who was a former party opponent to a party that the judge represented if the cases are similar in nature or are related. It is unlikely that many of the cases that a part-time municipal judge would hear will be related or similar in nature to cases that the part-time judge would handle as a contract attorney for DHR. However, in cases that are related or similar in nature to those that the judge has previously handled as an attorney for DHR, the judge should disqualify.

In cases where the defendant is currently a party opponent of DHR and DHR is represented by the judge, the judge should disqualify. Certainly, if a previous adversarial relationship is sufficient to create a reasonable question as to the judge's impartiality, a current adversarial relationship is more than sufficient to create the same. *See Gray, supra.*

This disqualification does not extend, however, to other defendants who may be party opponents of DHR in cases where the judge does not represent DHR. The Commentary to Canon 3C(1)(b) provides, "A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this

subsection.” In Advisory Opinions 02-793 and 92-460, the Commission advised that, even though the judge had previously represented DHR as an attorney, the judge was not disqualified to hear separate cases so long as the judge did not participate in the case and had no prior knowledge of the facts. However, the judge would be disqualified from cases that were related to the proceedings in which the judge did serve as DHR’s attorney. Just as the judges in Advisory Opinions 02-793 and 92-460 were not disqualified from hearing DHR cases in which they did not participate as legal counsel for DHR, a judge is not disqualified from a case in which a defendant was a party opponent of DHR where the judge did not represent DHR.

Moreover, while the judge represents DHR in matters that are referred to the judge, that representation is limited to only those matters. The judge does not represent DHR in matters that are referred to other DHR attorneys. Because the judge does not represent DHR on those matters that are not referred to the judge, there is no formal adversarial relationship on which a reasonable person, *knowing all of the facts known to the judge*, could create a reasonable basis for questioning the judge’s impartiality. *See Sheffield*, 465 So. 2d at 356 (emphasis added).

Therefore, a judge should disqualify from cases in which a defendant appears who was a party

opponent of DHR where the judge served as legal counsel for DHR if the cases are similar in nature or are related. However, a judge is not required to disqualify from cases involving defendants who are party opponents of DHR where the judge does not serve as legal counsel for DHR.

REFERENCES

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

Alabama JIC Advisory Opinions 88-349, 92-460, 95-547, 97-631, 02-793, 07-883, 13-916, 13-917.

Alabama Rules of Professional Conduct 1.10 cmt.

Cynthia Gray, *An Ethics Guide for Part-Time Lawyer Judges* (Am. Judicature Soc’y 1999).

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

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

Public Reprimand of Bronson (Tex. State Comm’n on Jud. Conduct Jan. 19, 1995).

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 18 of the Alabama Rules of Procedure of the Judicial Inquiry Commission. For further

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