

# JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JANUARY 21, 2025

ADVISORY OPINION 25-964

## DISQUALIFICATION: PRIOR SERVICE IN ATTORNEY GENERAL'S OFFICE

that might come before the judge's court.

### ISSUE

Is an appellate judge disqualified from certain criminal appeals involving a division of the Office of the Attorney General based on prior service in that same division?

**Answer:** No, as long as the judge did not personally participate in the case and the judge's impartiality cannot reasonably be questioned because of the judge's prior service in that division.

### FACTS

An appellate judge previously served as an Assistant Attorney General in a division of the Office of the Attorney General that exclusively handles certain cases. During the judge's tenure, the judge has appeared as attorney of record in a number of cases before the judge's court and has materially assisted other attorneys in other cases, though not appearing as counsel of record. The judge did not exercise any supervisory authority over any other attorneys during his tenure as an Assistant Attorney General.

Pursuant to Canon 3C(1)(b), the judge will disqualify from cases in which the judge previously appeared as counsel of record and cases in which he has provided material assistance to other attorneys while not appearing as counsel of record. Furthermore, the judge has been actively screened from any new cases

### DISCUSSION

Disqualification is governed by Canon 3C. Canon 3C(1) provides:

A judge should disqualify himself [or herself] in a proceeding in which his [or her] disqualification is required by law or his [or her] impartiality might reasonably be questioned, including but not limited to instances where:

....

(b) He [or she] served as a lawyer in the matter in controversy, or a lawyer with whom he [or she] previously practiced law served during such association as a lawyer in the matter, or the judge or such lawyer has been a material witness concerning it.

The Commentary to Canon 3C(1)(b) further 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; a judge formerly employed by a governmental agency,

however, should disqualify himself [or herself] in a proceeding if his [or her] impartiality might reasonably be questioned because of such association.

Thus, judges who have formerly served as lawyers for government agencies do not have an association with other lawyers within that same agency for the purposes of disqualification under Canon 3C(1)(b).

Accordingly, the Commission has recognized that former assistant district attorneys are not disqualified from acting as a judge in subsequent criminal cases brought by the district attorney's office in which the judge formerly served, provided that the judge did not participate in the case in any way. Advisory Opinion 94-522; Advisory Opinion 92-460 (quoting William Wayne Kilgarlin & Jennifer Bruch, *Disqualification and Recusal of Judges*, 17 ST. MARY'S L.J. 599, 614 (1986)) ("If the judge did not participate in the investigation, preparation, or presentation of the case, the mere fact that he was in the office of the district attorney has been held not to be grounds for disqualification.").

This same reasoning applies equally to judges who prosecuted appeals in the Office of the Attorney

General as assistant attorneys general. Therefore, the inquiring judge is not disqualified from any case in which the division of the Office of the Attorney General in which the judge previously served appears as counsel in a case before the judge's court as long as the judge did not participate in the case and the judge's impartiality cannot reasonably be questioned based on the judge's prior service in that division.<sup>1</sup>

### **REFERENCES**

Alabama Canons of Judicial Ethics 3C(1)(b) and Commentary.

Alabama JIC Advisory Opinions 92-460 and 94-522.

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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 18 of the Alabama 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; email: [jic@jic.alabama.gov](mailto:jic@jic.alabama.gov).

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<sup>1</sup> An example of when a judge's impartiality might reasonably be questioned based on a judge's prior service as a government lawyer might be where the judge had

supervisory authority over the particular government agency or division that handled the matter even though the judge may not have participated personally in the matter.