

Judicial Inquiry Commission

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November 1, 1989

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge is disqualified from sitting in a proceeding brought under Rule 20 of the Alabama Temporary Rules of Criminal Procedure. In the proceeding the petitioner challenges the validity of a prior conviction obtained before the judge. The Rule 20 petition is made up of conclusory allegations concerning the alleged invalidity of the petitioner's prior conviction. These allegations include one in which the petitioner states that there is "actual prejudice and cause for default in the administration of justice in the Butler County Circuit Court." He alleges no facts to support this claim. The petitioner further alleges that the sentence received by him was unduly harsh.

It is the opinion of the Commission that under the described circumstances the judge is not disqualified. This opinion is based on Canon 3C of the Alabama Canons of Judicial Ethics.

Canon 3C governs judicial disqualification and provides in pertinent part as follows:

- (1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:
 - (a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

Under this Canon, a judge is disqualified if his impartiality might reasonably be questioned. Our Supreme Court has interpreted this Canon to mean that if a man of ordinary prudence, knowing all of the facts known to the judge, would reasonably question the judge's impartiality, disqualification is required. *In re Sheffield*, 465 So. 2d 350 (Ala. 1984). This standard requires the existence of some factual basis for the judge's impartiality to be questioned. The mere allegation that a conviction is invalid for conclusory reasons does not constitute a sufficient factual basis for disqualification.

In this instance, no facts are presented to the Commission which could cause anyone to question the judge's impartiality. The only fact presented is that the petitioner alleges that his sentence was "unduly harsh" and that "he is showing ... actual prejudice and cause for default in the administration of justice in the Butler County Circuit Court." No facts on which this allegation is based are stated. These allegations standing alone are simply insufficient to place the judge's impartiality in question.