



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2014-02

April 11, 2014

QUESTION:

Is a judge required to disqualify from matters wherein a party moves for the disqualification of the judge based upon the fact that the party has filed a complaint about the judge with the Judicial Standards Commission?

COMMISSION CONCLUSION:

The mere filing of a complaint with the Judicial Standards Commission, nothing else appearing, does not establish a reasonable basis upon which one may reasonably question the subject judge's impartiality in proceedings involving the complainant.

DISCUSSION:

Canon 3C(1) together with subsection (a) of the Code of Judicial Conduct reads, "[O]n motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to instances where: (a) The judge has a personal bias or prejudice concerning a party ..." Canon 3D provides that "nothing in this Canon shall preclude a judge from disqualifying himself/herself from participating in any proceeding upon the judge's own initiative." A judge should always disqualify when the judge questions his/her own ability to remain impartial.

The Commission recognizes the likely abuse of the judicial process which would arise should a party be permitted to "judge shop" by way of motions to disqualify a judge based upon the mere filing with the Commission of a complaint against the judge. The Commission further notices that the majority of complaints it receives arise from civil litigants and criminal defendants who disagree with a judge's decision and attribute the judgment to ethical misconduct without supporting evidence.

The Commission further advises that should a judge be notified of the initiation of a formal investigation, receive a private letter of caution, or be served with a statement of charges initiating

disciplinary proceedings as the result of a complaint, the judge should disqualify from all matters involving the complainant.

The Commission distinguishes the scenario presented within this opinion from the situation underlying the case of *In re Braswell*, 358 N.C. 721 (2004), which held that a judge is disqualified from hearing a case when one of the parties has a pending lawsuit against the judge. The Commission notices that in the *Braswell* case, one of the parties had a pre-existing civil lawsuit filed against the judge in a matter unrelated to matter in which the judge was presiding and then asked the judge to recuse. Where a pre-existing conflict, such as a civil law suit, exists prior to a litigant's appearance before the judge, a reasonable appearance of bias or conflict of interest may arise. Similarly, a pre-existing complaint filed with the Judicial Standards Commission arising from another matter which results in discipline being taken against the judge could also create a reasonable appearance of bias or conflict of interest that might require recusal. However, the Commission concludes that any new lawsuit, or complaint, arising solely to complain about the adjudication of the present matter, and then used as the sole justification for disqualification or recusal, could be viewed as obstructive, dilatory, and purposed to thwart the administration of justice. In such situations, recusal should not be required under the Code of Judicial Conduct, unless the judge is notified of the initiation of a formal investigation, receives a private letter of caution, or is served with a statement of charges initiating disciplinary proceedings as the result of the complaint.

References:

North Carolina Code of Judicial Conduct
North Carolina Judicial Standards Commission Annual Reports
Canon 3C(1)(a)
Canon 3D
In re Braswell, 358 N.C. 721 (2004)

ver 1.1