

## Judicial Inquiry Commission

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September 27, 1996

The Judicial Inquiry Commission has considered your request for an advisory opinion as to whether you or the other Circuit Judge in your circuit are disqualified in a certain proceeding due to any of the following circumstances:

1. A counterclaim has been filed in the proceeding alleging that contributions were made in violation of a provision of the will at issue which states that contributions were to be used exclusively in two named counties. In 1985, two partners in a law firm of which the presiding judge also was then a partner gave an interpretation of this provision to a now-deceased beneficiary who was one of the trustees of the testamentary trust created by the will in which they advised that it was “virtually impossible” that a court would interpret the will to permit a contribution to a certain educational institution located outside these two counties. The counterclaim alleges numerous contributions outside the two counties, including one to the institution at issue in the legal opinion rendered by the judge’s then law partners.
2. The presiding judge and the other circuit judge each have signed an order confirming the appointment of a successor trustee for the trust. The will required that the name of any successor trustee be filed in the court but it did not require any order of confirmation. The counterclaim alleges that the trustees confirmed by the two judges have made improper distributions of trust funds.
3. The official court reporter for the other circuit judge is the mother-in-law of one of the trustees who is a plaintiff/counter- defendant.

Canon 3C(1)(b) provides that a judge is disqualified when “a lawyer with whom he previously practiced law served during such association as a lawyer in the matter [in controversy].” “A ‘matter’ [as in a matter in controversy] is [a] subject (as a fact, an event or course of events, or a circumstance, situation, or question) of interest or relevance.” Rushing v. City of Georgiana, 361 So. 2d 11, 12 (Ala. 1978).

The disqualification in Canon 3C(1)(b) is not limited to situations where the same precise case in which a former law partner served previously as an attorney is before the judge. Rather, it includes cases involving the same matter or arising from the same fact situation, and can also include similar or related matters.

It is the opinion of the Commission that you are disqualified from hearing the case under Canon 3C(1)(b). Lawyers with whom you previously practiced served during such association as lawyers in a matter now in controversy in the present action.

It is the opinion of the Commission that neither you nor the other judge in the circuit are disqualified by virtue of the fact that you issued orders confirming the appointment of trustees who allegedly have made improper distributions of trust funds. None of the express bases for disqualification in Canon 3C(1) appear to apply. Further, a judge's rulings in the same or a related case ordinarily may not serve as the basis for recusal. Parker v. State, 587 So. 2d 1072, 1097 (Ala. Crim. App. 1991). The Commission also notes that the will expressly vested in the trustees full power and authority to appoint successor trustees, the judges' orders merely confirmed that the appointments so made were proper under such authority, and these appointments are not at issue in the present litigation.

With regard to your final inquiry, this Commission has previously held that a judge is not disqualified by the mere fact that a party is related by blood or marriage to the judge's court reporter. Advisory Opinions 79-62, 93-513, and 94-535. The Commission has also previously held that the judge in such a situation should reveal the relationship to the parties and their attorneys in order to avoid any appearance of impropriety. Advisory Opinions 93-513 and 94-535. Of course, if the judge has an actual personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts as a result of his court reporter's relationship to a party, then he would be disqualified under Canon 3C(1)(a). Otherwise, the judge would only be disqualified if there are additional circumstances beyond the mere relationship of the court reporter to the party which would cause the judge's impartiality to be reasonably questioned. The Commission notes that if such additional circumstances exist, and if assigning a different court reporter to the particular case would remove the appearance of partiality, the assignment of a different court reporter would be an alternative to recusal.

Sincerely,

JUDICIAL INQUIRY COMMISSION