

Judicial Inquiry Commission

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February 1, 1983

The Judicial Inquiry Commission has considered your request for an opinion concerning whether and under what circumstances you would be disqualified from hearing proceedings where your former law partner represents one of the parties. You asked the following questions:

1. Should I recuse myself in all matters in which he is involved in the future, whether or not they arose during the time we were practicing together?

If the answer is in the affirmative is there any time period concerning his ability to practice law, criminal or civil, while I serve as circuit judge?

2. Can my disqualification concerning any of these matters be avoided by obtaining waivers from the attorneys or the parties involved in the litigation?
3. Am I to disqualify myself concerning any matter such as non-contested divorces or matters that involve appointments to criminal cases?

It is the opinion of the Commission that you should disqualify yourself from hearing any proceeding in which your former law partner represents one of the parties if your former law partner represented that party in the matter in question during the period of your partnership, but you are not disqualified from hearing proceedings if your former law partner did not represent a party in the matter in controversy while you and he were partners. Canons of Judicial Ethics, Canon 3C(l) (b) provides that a judge is disqualified in a proceeding where "a lawyer with whom he previously practiced law served during such association as a lawyer in the matter." This disqualification extends to all proceedings, including uncontested civil matters and the early stages of criminal cases such as arraignments.

It is the opinion of the Commission that the disqualification cannot be remitted. Canons of Judicial Ethics, Canon 3D, provides for remitting disqualifications which arise under Canon 3C (1) (c) and 3C (1) (d) only.

Very truly yours,

JUDICIAL INQUIRY COMMISSION