

Judicial Inquiry Commission

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The Judicial Inquiry Commission has formally considered the question of whether, under the Alabama Canons of Judicial Ethics, a probate judge may appoint his or her attorney son or daughter to serve as a guardian ad litem in matters pending before the probate court in the court's judicial capacity.

It is the opinion of the Commission that a probate judge is prohibited from appointing his or her attorney son or daughter as a guardian ad litem in matters pending before the probate court in its judicial capacity.

Under the compliance provisions of the Alabama Canons of Judicial Ethics, probate judges must comply with applicable Canons when performing judicial duties. While a probate judge is not charged with complying with the Canons in the performance of the administrative and executive duties of the probate office, he is charged with complying when he exercises duties which pertain to his judicial office, i.e., appointment of guardians ad litem.

Canon 3 of the Alabama Canons of Judicial Ethics is most pertinent in this instance. Specifically, Canon 3C would appear to prohibit a judge's appointment of certain relatives as guardians ad litem.

Canon 3C governs disqualification of judges; the Commission has previously held that under this Canon a judge is disqualified from sitting in any proceeding in which the judge is related within the fourth degree by blood or marriage to an attorney for any litigant. This Commission has also found that Canon 3C applies to the appointment of attorneys in indigent criminal cases prohibiting such appointments where the attorney is related to the judge within the fourth degree (Opinions 80-91 and 82-138). No valid distinction can be drawn between the appointment of attorneys in indigent criminal cases and court-appointed guardians.

The Commission is cognizant of the fact that Section 12-13-52, Code of Alabama, 1975 has been repealed by Act No. 84-791. That provision set a fine to be imposed upon probate judges, who appointed certain persons, including relatives, as guardians ad litem. The repeal of that Code section has no effect upon the provisions of the Alabama Canons of Judicial Ethics.

Yours very truly,

JUDICIAL INQUIRY COMMISSION