

Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether you are disqualified under the following circumstances:

In 1985, before you became a judge, you, as an attorney, were appointed by the probate court to represent the father in certain legal proceedings which resulted in the civil commitment of the mother on the ground of mental incompetency.

You are now presiding over the divorce case in which the mother is the plaintiff and the father, your former client, is the defendant. One of the major issues in that case concerns the custody of the parties' minor child. The father is attempting to show that the mother is unfit by attacking her mental stability. As proof, the father intends to introduce evidence of either the probate court records from 1985, the mother's mental condition in 1985, or the circumstances of her commitment.

When the divorce trial began, no one, including yourself, had any recollection of the prior commitment. The mother's attorney has moved that you recuse yourself and has requested a mistrial.

Under these circumstances, it is the opinion of this Commission that you are disqualified and must recuse yourself in the divorce proceedings. Canon 3C (1)(b), Alabama Canons of Judicial Ethics provides:

"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:

. . .

(b) He served as a lawyer in the matter in controversy, . . ."

The general principles governing this matter are stated in J. Shaman, S. Lubet, and J. Alfini, Judicial Conduct and Ethics 130-131 (1990).

"A judge may also be disqualified from sitting in on cases which involve prior clients of his or her law practice. . . Quite obviously, a judge would be disqualified from presiding over a case involving the same matter or arising from the same fact situation in which he or she previously served as an attorney. . . ."

“The appearance of partiality can also be created when a judge presides over a case which involves a party whom the judge previously represented in a similar or related matter. In fact, even if the current case involves a different controversy and different parties than the former case, recusal may be required if ‘the same course of events is relevant to both cases.’”

In both the divorce case and the prior commitment case, the mother’s mental capacity is a “matter in controversy.” See Rushing v. City of Georgiana, 361 So.2d 11, 12 (Ala. 1978) (“A ‘matter’ is: [a] subject (as a fact, an event or course of events, or a circumstance, situation, or question) of interest or relevance.”).

Furthermore, while we do not suggest that there exists the slightest degree of actual personal bias or prejudice toward the mother on your part, the fact of your prior participation in the civil commitment of the mother makes the divorce case a “proceeding in which . . . [your] impartiality might reasonably be questioned” under Canon 3C(l).

This advisory opinion is the opinion of the entire Judicial Inquiry Commission. Please feel free to contact me if you have any questions regarding this or any other matter.