

Judicial Inquiry Commission

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April, 19, 1996

The Commission has considered your request for an advisory opinion as to whether a judge is disqualified from hearing a declaratory judgment action to determine whether two adopted children of one of the now-deceased primary beneficiaries of a will are “descendants” of such person under the provisions of the will. In 1985, two partners of a law firm in which the judge then also was a partner gave an interpretation of another provision of the same will to the now-deceased beneficiary (who was one of the trustees of a testamentary trust created by the will); the question posed at that time concerned whether an expenditure could be made to an particular college.

Canon 3C(l)(b) provides that a judge is disqualified where “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(l)(b) is not limited to situations where the same precise case is before the judge in which a former law partner served previously as an attorney. Rather, it includes cases involving the same matter or arising from the same fact situation, and can also include similar or related matters. See Advisory Opinion 93-478. However, in the situation at issue, it is the opinion of the Commission that the matter in controversy in the prior case is neither the same matter in controversy in the current case nor even a truly related matter. Although the same will is being construed, the two provisions at issue are entirely separate and distinct.

It is the opinion of the Commission that the judge is not disqualified in the declaratory judgment action.

Sincerely,

JUDICIAL INQUIRY COMMISSION