

# JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MARCH 25, 2003

ADVISORY OPINION 03-813

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## DISQUALIFICATION DUE TO PRIOR SERVICE OF FORMER PARTNER AS A LAWYER IN THE MATTER IN CONTROVERSY

### ISSUES

Is a judge disqualified to hear a case when his former law partner had an office conference with a party regarding the matter in controversy but was not retained to represent the individual in the matter? **Answer:** No, assuming no attorney/client relationship was established.

### FACTS

The former law partner of a circuit judge who was recently elevated to the bench had an office conference with a person who is now a party to a case assigned to the judge. The person did not retain the judge's former partner to provide representation in the divorce case to be filed. The office conference pertained to the party's marital situation, which is the subject of the divorce action pending before the judge. The judge never discussed the office conference with his law partner and has no information about what was discussed during the conference.

### DISCUSSION

As the inquiring judge recognizes, the answer to his question depends upon the definition of the phrase "served as a lawyer in the matter." Under Canon 3C(1)(b), a judge is disqualified in a proceeding when "a lawyer with whom he previously practiced law served during such association as a lawyer in the matter."

In *Rushing v. City of Georgiana*, the Alabama Supreme Court gave the phrase "matter in controversy" a rather broad definition. *Rushing v. City of Georgiana*, 361 So.2d 11, 12 (1978). The same matter clearly is in controversy in the office conference at issue and the case pending before the judge.

It is the opinion of the Commission that whether an attorney served as a lawyer in a matter should turn on whether an attorney/client relationship was established. If an attorney/client relationship was not established between the judge's former partner and the party in the case pending before the judge, the judge is not disqualified to hear the case under Canon 3C(1)(b) on account of the office conference his former partner had with the party to the case. However, if an attorney/client relationship was established during the conference and the attorney/client privilege attached, the judge is disqualified to hear the pending case, even though the party did not retain the judge's former partner to pursue the matter. *See*, Advisory Opinion 83-197 (finding a judge disqualified who had acted as an attorney by providing legal advice to a party in the matter in controversy).

### REFERENCES

Advisory Opinion 83-197.

Alabama Canons of Judicial Ethics, Canon 3C(1)(b).

*Rushing v. City of Georgiana*, 361 So.2d 11 (1978).

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This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: [jic@alalinc.net](mailto:jic@alalinc.net).