

1980 WL 120910 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 3, 1980

***1 Re: Opinion Request Concerning Judicial Disqualification**

The Honorable Raymond C. Eubanks, Jr.
Judge
Probate Court
Spartanburg County Courthouse
Spartanburg, South Carolina 29301

Dear Judge Eubanks:

You recently requested an Opinion from this Office concerning the potential disqualification of a Probate Judge in situations where he had drawn a will for the decedent or witnessed the execution of a will by a decedent. As you are aware, this request followed a Formal Opinion by this Office, which was issued to you and which considered the disqualification of Probate Judges and Associate Probate Judges.

As the Formal Opinion of July 30, 1980, indicates, [Section 14-23-1080 of the South Carolina Code of Laws \(1976\)](#) specifies certain instances in which neither a Probate Judge nor an Associate Probate Judge may act in a case. This Code section states that '[n]o Judge or Associate Judge shall sit in any case in which . . . he has been counsel or a material witness . . .' In situations where a Judge is disqualified, this Code section provides that the Chief Justice of the Supreme Court shall appoint a special Judge.

This Code of Judicial Conduct also provides some guidance in this area. Canon 2A of the Code states that:

A Judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Code further provides that:

A Judge should disqualify himself in a proceeding in which his impartiality might be questioned, including . . . instances where . . . he has a personal bias or prejudice . . .

Canon 3C(1)(a), Code of Judicial Conduct. It is clearly the intent of the Code to avoid any possible appearance of impropriety by a Judicial Officer.

It is therefore the opinion of this Office that it would be inappropriate for a Probate Judge to sit in a case in which he had previously, as a lawyer, either drawn a will for the decedent or acted as a witness for the execution of the will. In these situations, it would be necessary for the Judge to request that a special Judge be appointed to consider the matter. This situation has been discussed with the Director of Court Administration, Mr. L. Edmund Atwater, III, and this Office has been assured that special Judges will be appointed in these situations whenever an appropriate request is made.

Please do not hesitate to contact either me or Mr. Atwater if you have any questions in regard to this matter.

Sincerely yours,

Keith M. Babcock

Assistant Attorney General

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