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Opinion No. 10-114

Timeliness of notification of conflicts of interest by persons taking depositions

QUESTIONS

1. Tenn. Code Ann. § 24-9-136 prohibits the taking of depositions by persons with certain conflicts of interest and requires that parties to the litigation be notified in a timely fashion of those conflicts. What is the definition of “timely fashion”?
2. Does disclosure at the deposition meet the statutory requirement of notification in a timely fashion?

OPINIONS

1. The term “timely fashion” in this context requires that potential conflicts be brought to the attention of the parties as soon as reasonably possible.
2. Disclosure of a conflict at the time of the taking of the deposition, if that is when the person taking the deposition first becomes aware of the conflict, would meet the statutory requirement.

ANALYSIS

Tenn. Code Ann. § 24-9-136 prohibits the taking of depositions by persons with certain conflicts of interest set forth in subsection (a). Subsection (b)(1) requires such persons to disclose to the parties in a timely fashion the existence of any facts known to the person that are relevant to the conflicts of interest outlined in subsection (a).

The statute does not define the term “timely fashion.” In an analogous situation, the Court of Appeals stated that a party seeking recusal of a judge on the basis of prejudice or partiality “must seek recusal in a timely fashion, immediately after he becomes aware of such prejudice or partiality.” *In the Matter of C.T.S.*, 156 S.W.3d 18, 23 (Tenn. Ct. App. 2004). We believe that Tenn. Code Ann. § 24-9-136(b)(1) would be interpreted similarly. Potential conflict problems should be brought to the attention of the parties as soon as reasonably possible to minimize expense and inconvenience.

Accordingly, disclosure at the deposition, if that is the first time at which the person taking the deposition becomes aware of the conflict, would meet the statutory requirement.

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