

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

March 3, 1986

The Judicial Inquiry Commission has considered your request for an opinion concerning whether, under the Alabama Canons of Judicial Ethics, a Judge is disqualified from sitting in a criminal proceeding in which the defendant was arrested while the Judge was serving as an Assistant District Attorney in his circuit. While serving as Assistant District Attorney, the Judge did not participate in the arrest and had no knowledge of the case.

It is the opinion of the Commission that, under the facts stated, the Judge is not disqualified from sitting in the proceeding. Disqualification is governed primarily by Canon 3C(l). That Canon 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, or a lawyer with whom he previously practiced law served during such association as a lawyer in the matter, or the judge or such lawyer has been a material witness concerning it.”

The Commentary to this Canon specifically notes:

“A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.”

Since the Judge did not participate in the case or have any knowledge of the case as an Assistant District Attorney, the Judge’s impartiality may not reasonably be questioned.

Sincerely,
JUDICIAL INQUIRY COMMISSION