

## Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

June 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 where the judge previously revoked the defendant's probation based on a factual finding that the defendant had committed the act with which he is presently charged.

It is the opinion of the Commission that the judge is not disqualified from sitting in the criminal proceeding in question. This decision is based on Canon 3C of the Alabama Canons and Advisory Opinion 83-188 previously issued by the Commission.

In Advisory Opinion 83-188, the Commission specifically found that a judge's sitting in a preliminary matter, i.e., issuing a search warrant or an arrest warrant does not disqualify the judge from presiding at the trial of the accused arising out of the same facts. That opinion is equally applicable here. A judge is required to preside over a proceeding in a neutral and detached manner. He is presumed to issue his rulings based on the law and the evidence presented in each separate proceeding. Sitting in a probation revocation proceeding arising out of the same facts on which an accused is later tried in a separate criminal proceeding does not per se disqualify a judge from sitting in the separate criminal proceeding.

Sincerely,

JUDICIAL INQUIRY COMMISSION