

## Judicial Inquiry Commission

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November 21, 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 proceeding under certain circumstances. Under the fact situation presented, during the course of a civil trial certain evidence was introduced. The case was later settled with the court retaining jurisdiction as to the disposal of certain property. The court ordered that all of the evidence, including certain evidence claimed by the plaintiff to have been stolen from him, be retained by the clerk. Upon examining documentary evidence, the judge recognized the possibility that they contained evidence of possible criminal conduct on behalf of one of the parties as well as others. The judge, therefore, forwarded copies of the documents to appropriate law enforcement agencies. Based on these facts one of the parties seeks the judge's disqualification or recusal based on bias.

It is the opinion of the Commission that the foregoing facts are insufficient to establish a disqualifying personal bias on the part of the judge. Judicial disqualification is governed by Canon 3C of the Alabama Canons of Judicial Ethics.

It has long been established that personal bias under Canon 3C(1)(a) must be established by the evidence and may not be presumed. In Advisory Opinion 86-281, the Commission found that reporting a suspected violation of the law arising out of evidence adduced during a trial falls within the judicial authority of a sitting judge and that the judge's appearance of impartiality should not be affected by such a report. Advisory Opinion 86-281 appears to be dispositive of this matter.

Sincerely,

JUDICIAL INQUIRY COMMISSION