

Judicial Inquiry Commission

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September 1, 1987

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a part-time municipal court judge, who also serves as a part-time assistant district attorney, is disqualified from sitting in a certain proceeding. The proceeding in question involves a charge of reckless driving. When the defendant was arrested for reckless driving, the arresting officers found marijuana in the defendant's car. The defendant is now charged in the municipal court with the offense of reckless driving and in the circuit court with felony possession of marijuana. The felony possession case will be tried in the circuit court by a member of the district attorney's staff.

It is the opinion of the Commission that the judge is disqualified from sitting in the reckless driving proceeding. Our opinion is based on Canon 3C of the Alabama Canons of Judicial Ethics. That Canon provides in pertinent part:

“(1) A judge should disqualify himself in a proceeding in which ... his impartiality might reasonably be questioned ...”

This provision does not require actual bias on the part of the judge. Under this standard, disqualification may be based on facts showing less than actual bias. As long as a reasonable person, knowing all the facts, might reasonably question the judge's impartiality, disqualification is required. In the instant case, a reasonable person might see the judge as both judge and prosecutor due to his close association with the prosecutor's office.

Sincerely,

JUDICIAL INQUIRY COMMISSION