

Judicial Inquiry Commission

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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 the retrial of a capital murder case which has been reversed on appeal. The defendant argues that in the sentencing phase of a capital murder trial the judge is required, as judge, to make a detailed finding of fact and determine questions of fact literally of life or death importance to the defendant.

It is the opinion of the Commission that under the Alabama Canons of Judicial Ethics there exists no automatic disqualification disqualifying a judge from sitting as judge in the second or third retrial of a capital murder case. This opinion is based on Canon 3C of the Alabama Canons of Judicial Ethics and on prior decisions of the Alabama Court of Criminal Appeals and the Supreme Court of Alabama.

Canon 3C sets out the standards for disqualification of judges in particular instances. That Canon does not recognize judicial bias or prior trial of a cause by a judge in his judicial capacity as a ground for disqualification. Further, the issue of judicial bias as a ground for disqualification has been considered by both the Alabama Court of Criminal Appeals and the Supreme Court of Alabama in capital murder litigation. In Whisenant v. State, 482 So. 2d 1225, 1237 (Ala. Cr. App. 1982) aff'd in relevant part, 482 So. 2d 1241, 1245, (Ala. 1983) the Court of Criminal Appeals held as to retrial by a judge as trier of fact:

While a true personal bias will disqualify a jury, a judicial bias, if one exists, will not disqualify a trial judge from hearing a case. Koch v. State, 401 So. 2d 796 (Ala. Cr. App.), cert. denied, 401 So. 2d 801 (1981).

In the same case before the Alabama Supreme Court, that court affirmed as to this issue holding:

The Court of Criminal Appeals correctly held that the trial judge was not disqualified because he was the same trial judge who had heard the case and imposed the death penalty in Whisenant's prior trial.

Ex Parte Whisenant, 482 So. 2d 1241, (Ala. 1983).

Based on the foregoing, the mere fact that a judge has previously acted as the trier of fact in the sentencing phase of a capital murder case does not cause the judge to be disqualified upon retrial of the same case.