

Judicial Inquiry Commission

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May 31, 1989

Upon your request, the Judicial Inquiry Commission has reconsidered Advisory Opinion 80-94 concerning whether the Alabama Canons of Judicial Ethics prohibit a judge from assessing court costs against a criminal defendant upon the dismissal of the case against the defendant. You noted that Advisory Opinion 80-94 and Section 12-10-150, Code of Alabama, 1975 appear to be inconsistent. Upon examining the Advisory Opinion and the cited Code section as presently written, the Commission is in agreement and hereby withdraws and modifies the Advisory Opinion.

Advisory Opinion 80-94 was released on December 15, 1980. At that time, under Alabama law, specifically Melton v. State, 30 Ala. App. 136, 1 So.2d 90 (1941) costs could not be assessed in criminal cases in which a nolle prosequi or a dismissal is entered in favor of the defendant. The rule in Melton appears to have been superseded by Act. No. 81-353 wherein the legislature established the public policy of this State as follows:

“... The state does recognize that situations will arise from time to time wherein justice may best be served by allowing a judge to enter an order dismissing a case upon payment of costs by the defendant ...”

Section 12-19-150(a), Code of Alabama, 1975. The legislature further, provided that:

“... Such order (dismissing a criminal case) may be conditioned upon the defendant's payment of the docket fee and other court costs accruing in the proceeding ...”

Section 12-19-150(b). Based on this change in the law, Advisory Opinion 80-94 is hereby withdrawn.

Sincerely,

JUDICIAL INQUIRY COMMISSION