

Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion on several different issues concerning the handling of cases over which the district court has exclusive original jurisdiction and in which a motion to nolle prosequi has been requested. Specifically, four situations are presented in which you ask whether the Alabama Canons of Judicial Ethics would be violated. Those situations are as follows:

1. Whether a Circuit Judge may enter an order dismissing or granting a motion to nolle prosequi in a case within the exclusive original jurisdiction of the District Court without the case having first been transferred to the Circuit Court pursuant to Rule 13 of the Rules of Judicial Administration?
2. Assuming that Morrison v. State, 398 So.2d 730, reversed on other grounds, 398 So.2d 751, establishes the law to be that a prosecutor may request a nolle prosequi and that the judge presiding over the case has the discretion to grant or deny the request, would the Canons be violated if the judge granted the request without any showing of or investigation into the reason for the request but simply granting the request as a matter of law?
3. If the prior question is answered in the affirmative, would a showing of the reason for the request to the court in writing to be made a part of the record in the case be sufficient to show compliance with the Canons?
4. Under the circumstances above would a judge violate the Canons by granting such a request on the basis of personal or political favors rather than on the basis of the law, facts or procedures related to the case?

It is the opinion of the Commission that only the fourth situation above presents a violation of the Canons of Judicial Ethics. However, all of the situations concern the propriety of judicial rulings and are governed primarily by Canons 2 and 3. Those Canons provide in pertinent part as follows:

Canon 2A

A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2C

A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; ...

Canon 3

A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial activities of a judge take precedence over his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. ADJUDICATIVE RESPONSIBILITIES:

- (1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

* * * *

In applying Canon 2, above, the Supreme Court of Alabama has held that a judge may not be disciplined under that Canon for an erroneous legal ruling absent a showing of bad faith. See In re Sheffield, 465 So.2d 350, (Ala. 1984). Although we know of no authority for a circuit judge to rule on district court cases without proper assignment or through an appeal, the Commission has no authority to determine the correctness of the legal positions stated. That authority is delegated to the Attorney General through his opinion authority. However, assuming without deciding, that the judge in your first two inquiries entered legal rulings not in accord with the law, such do not amount to a violation of the Canons except as provided in In re Sheffield. Thus, the Commission must find that the fact situations as simply stated do not constitute a violation of the Canons of Judicial Ethics unless there exist facts or circumstances from which an improper purpose, bad faith or malice can be found.

Your first two fact situations having been found not to violate the Canons as stated, your third question is moot.

The fourth situation presents a totally different set of circumstances. The question presented there is whether a judge violates the Canons if he enters rulings in cases for personal or political reasons, reasons other than presented by the evidence and the law. It is clear under Canons 2 and 3 that rulings based on personal or political reasons are prohibited and violate these two Canons.