

Judicial Inquiry Commission

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September 26, 1990

The Judicial Inquiry Commission has considered your request for an opinion concerning whether, under the Alabama Canons of Judicial Ethics, a part-time district attorney, who serves also as a part-time municipal court judge, may, in his judicial capacity, issue municipal arrest and search warrants and, if he can, whether such warrants may be returnable to the district court.

It is the opinion of the Commission that a part-time municipal court judge, who also serves as an assistant district attorney, is not prohibited from issuing municipal search and arrest warrants returnable to either the municipal or state district court. He is prohibited, however, from acting as an attorney in any proceeding in which he has issued warrants. The Commission further notes that the judge should be ever mindful of all of the Canons of Judicial Ethics, particularly Canons 1, 3 and 5 such that his involvement as an assistant district attorney and the district attorney's office remain totally independent of his judicial position. This opinion is based primarily on Advisory Opinion 86-251 in addition to Canon 1 of the Alabama Canons of Judicial Ethics.

In Advisory Opinion 86-251, the Commission held that a part-time municipal court judge is not prohibited from also serving as a part-time district attorney under the Compliance provisions of the Canons. We also noted that such judges were prohibited from serving as an attorney in any matter in which they served as judge or in any proceeding related thereto. See also Part A.(2) of the Compliance provisions. Therefore, the judge would be disqualified from serving as an assistant district attorney in any matter in which he had issued a warrant. Further, in order to maintain the independence and integrity of the judicial system, he should not even discuss such matters with the district attorney or his staff. As a caveat, the Commission further notes that should the part-time judge's court even appear to show favoritism by specific involvement in state cases or cases in which warrants are returnable to state courts, then Canon 1, which requires that a judge "uphold the integrity and independence of the judiciary", may be violated. Therefore, a judge serving in these two positions places a heavy burden upon himself to keep the positions totally separate.

Sincerely,

JUDICIAL INQUIRY COMMISSION