

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

July 31, 1998

The Judicial Inquiry Commission has considered your request for an advisory opinion concerning whether a judge, on a party's motion in connection with a motion for new trial, may provide by affidavit or other written document a detailed account of an in-chambers conference in the case that was not recorded. You also inquire whether a judge may be interviewed by counsel for the parties before a hearing at which the judge would testify upon being subpoenaed. Due to the judge's retirement before the motion for new trial will be heard, that motion will be heard by a different circuit judge.

It is the opinion of the Commission that a judge is not prohibited by the Alabama Canons of Judicial Ethics from responding to a request that he supply an affidavit or other written factual account of an unrecorded in-chambers conference in a case over which he previously presided, for use in connection with a motion for new trial which will be heard before a different judge. Likewise, a judge is not prohibited by the canons from being interviewed by counsel for the parties before a hearing at which the judge would testify upon being subpoenaed. However, it is generally the better practice for a judge not to give testimony unless officially summoned to do so.

The Commission has previously noted that there is a distinction in Canon 2C between character testimony and other types of testimony, such as testimony concerning events observed by the judge. Under Canon 2C, a judge must be officially summoned before he or she may appear to give character testimony. However, it is usually the better practice for a judge not to give any testimony unless officially summoned because in many situations voluntarily testifying may lend the prestige of the judge's office to advance the private interests of others or give an appearance of impropriety, in violation of other provisions in Canon 2. See Advisory Opinions 89-390, 93-499, 96-615, and 96-618.

The Commission also notes that a retired judge who is not serving in an active duty status is not required to comply with any of the canons. §D(1), Compliance With the Canons of Judicial Ethics. Thus, if a judge is not serving in an active duty status on the Supreme Court, on either of the courts of appeals, or on any circuit or district court, he or she is not required to comply with the Canons of Judicial Ethics.

Yours truly,

JUDICIAL INQUIRY COMMISSION