

## Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

March 30, 1977

The Judicial Inquiry Commission has considered your request for an opinion regarding whether or not your presiding as judge in certain cases might constitute a breach or violation of the Canons of Judicial Ethics. In your request you state that these cases arise out of an automobile accident occurring while you were serving as District Attorney of the First Judicial Circuit, prior to your assuming your present office of Circuit Judge of the same circuit. You further state that the driver of a vehicle involved in the accident is a party in various lawsuits arising out of the accident and which lawsuits are presently pending in your court. While no warrants of arrest were issued against this individual, you state that the matter was brought before the grand jury of Choctaw County while you were serving as district attorney. You state that as district attorney you were present during the grand jury deliberations and the presentation of evidence to the grand jury. The case was no-billed by the grand jury.

You state that the matters now before your court are three actions for wrongful death and one action for declaratory judgment pertaining to whether or not there was insurance coverage in the other cases.

You further state that you have informed the attorneys in the above described cases of your position and have inquired of them whether or not any of them request that you recuse yourself from hearing the matters. While none of the attorneys objected to your presiding over these actions as circuit judge, you ask the Commission for its opinion on the matter. Accordingly, it is our opinion that your presiding over the trial of these cases would constitute a breach or violation of Canon 3C (1) of the Canons of Judicial Ethics, 1976.

Canon 3C (1) provides in pertinent part as follows:

“A judge should disqualify himself in a proceeding in which.... his impartiality might reasonably be questioned ... “ (emphasis supplied)

Because of your prior association with matters to be presented in this cause, it is our opinion that your impartiality might reasonably be questioned. This is especially true since as district attorney, during grand jury proceedings which are held in secret, you were part of the attempted prosecution of one of the parties to this action. According to Canon 3C (1) you should disqualify yourself in the pending cases regardless of whether or not you are requested to do so by any of the parties or their attorneys.