

Judicial Inquiry Commission

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MONTGOMERY, ALABAMA 36104

March 1, 1982

The Judicial Inquiry Commission has considered your request for an opinion concerning whether a trial judge may grant a prosecuting attorney's motion to dismiss or nol pros a driving under the influence case. Your specific question arises in the context of an appeal de novo from a lower court where the prosecuting attorney's motion may be based on plea bargaining. It appears from your request that you are particularly interested in whether the dismissal of a criminal case upon payment of costs violates Canon 2 in light of Act No. 81-353, which specifically allows for dismissal conditioned upon payment of the docket fee and other costs accruing in the proceeding.

It is the opinion of the Commission that the dismissal of a criminal case in the manner prescribed by Act No. 81-353 would not violate Canon 2A of the Alabama Canons of Judicial Ethics.