

## Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge, who has issued an arrest warrant or search warrant, may later preside at the trial of the accused on charges arising out of the same facts. Your concern is that in sitting in these preliminary matters, the judge could not be a “neutral and detached” judge at the trial.

A judge’s disqualification is governed by Canon 3C of the Alabama Canons of Judicial Ethics. In pertinent part, that Canon provides:

- “(1) A judge should disqualify himself in a proceeding in which his disqualification is required by law or his impartiality might reasonably be questioned, including but not limited to instances where:
- (a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (b) He served as a lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer in the matter, or the judge or such lawyer has been a material witness concerning it ...”

Under this Canon, there are two broad circumstances in which a judge’s disqualification is required; first, when the judge’s disqualification is required by law; and second, when the judge’s impartiality might reasonably be questioned.

In the first instance, the Commission has found no case, Alabama or Federal, and no statute which would require that the judge is disqualified by law in the fact situations which you present.

In the second instance, it is the opinion of the Commission that the mere fact that a judge issues an arrest warrant or a search warrant does not present a situation in which the judge’s impartiality might reasonably be questioned. Indeed, Canon 3C(I)(a) and (b) requires personal bias or prejudice or personal knowledge of the facts as opposed to knowledge gained merely from sitting in a prior proceeding. If such were not the case, then a judge would always be precluded from retrying any case in which his previous decision was reversed on appeal. See in accord Owens v. State, 51 Ala. App. 50, 282 So.2d 402, cert. den. 291 Ala. 794, 282 So.2d 417 (1973). This is entirely different from the situation presented in Giles v. City of Prattville, 556 F.Supp. 612 (M.D. Ala. 1983 ) in which the United States District Court held that a municipal court judge could not possibly sit as a “neutral and detached” magistrate and act as prosecutor at the same time.