

Judicial Inquiry Commission

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February 26, 1993

In response to your request for an advisory opinion from the Judicial Inquiry Commission, it is the opinion of this Commission that as a circuit judge, you may preside over felony cases in which you, as a district judge, conducted a preliminary hearing.

“The purpose of a preliminary hearing in Alabama is to determine whether an offense has been committed and if so whether there is probable cause for charging the defendant therewith.” Coleman v. State, 44 Ala.App. 429, 433, 211 So.2d 917 (1968). At a preliminary hearing, “[o]nly evidence that is relevant to the question of whether probable cause exists shall be admitted.” Rule 5.3(a), A.R.Crim.P.

This Commission has previously held that the mere fact that a judge issues an arrest or search warrant, which only involves questions of probable cause, does not disqualify the judge from presiding at the trial of the accused on charges arising out of the same facts. Advisory Opinions 83-188 and 84-203.

This advisory opinion has been reviewed and approved by the Judicial Inquiry Commission and is the opinion of the Commission.