

Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is how should a judge avoid the appearance of impropriety in selecting one rehabilitative facility over another in sentencing spouse abusers.

In your county, the County Mental Health Center operates an educational program for spouse abusers. Recently, the South Alabama Chapter of the National Safety Council developed a similar program. Both programs are available to the municipal and district courts as alternatives to traditional sentences. Both programs are financed in large part by requiring the defendant to pay a fee.

Attendance at some type of rehabilitative program is a method of "alternative sentencing" encouraged under Rule 26.8. A.R.Crim.P. See also Ala. Code 1975, § 15-18-8. In order to avoid any appearance of impropriety, a judge should make reasonable efforts to insure that neither facility is favored over the other unless there is an objective reason for sentencing a defendant to one particular facility. Objective reasons for sentencing a defendant to one particular facility rather than the other include, but are not limited to, such factors as the quality of services offered by that facility, the cost of treatment, the financial situation of the defendant, and the facility's willingness to cooperate with the sentencing court.

In this regard, a judge should insure that he or she has no non-judicial connection to the educational or rehabilitative program of any agency to which the judge is making referrals. See Advisory Opinion 88-339 (judge should not lease his building to Regional Council on Alcoholism to run DUI school where judge hears DUI appeals from lower court); 82-166 (judge who is a founder and director of a juvenile detention facility should not accept contributions on behalf of the building fund where facility was established to accept referrals from judge's court).

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