

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

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The Judicial Inquiry Commission has considered your request that the Commission's earlier opinion No. 89-381 be modified in certain respects. That opinion concerned certain aspects of a proposed court truancy prevention program. The specific portions of the program which were addressed were a letter signed by the local juvenile court judge and given to all school students to be taken home and signed by the child and his/her parent(s) and an early intervention program which would involve bringing a truant child before the judge and/or juvenile court officials to emphasize the penalty for truancy and the necessity for attending school. In Opinion 89-381, the Commission advised that the letter as described therein would violate the Alabama Canons of Judicial Ethics and that the early intervention program might not pose such a problem.

In your request for modification, you specifically ask whether the addition of certain facts would cause the opinion to have a different result. The additional facts which you asked the Commission to consider are as follows:

1. Since the letters are not returned to the judge and are not used in connection with any truancy related court proceedings, is your conclusion any different?
2. If the Commission's opinion regarding the letter remains unchanged with this additional information, what is the proper action for a judge to take in truancy referral if a letter has previously been disseminated with his or her signature?
3. Does a judge's participation in an early warning program, as outlined herein, cast doubt on his capacity to decide impartially a truancy petition that may later come before him involving any persons who participated in the early warning program? In this regard, would the Commission's opinion be any different if the judge actively participated in a discussion with the parents and/or children in the early warning program?
4. Aside from the matters already addressed in this request, does the Commission note any other apparent ethical problems for judges in carrying out the recommendations for court truancy programs?

Each of these situations will be addressed in the order in which they are raised.

In response to your first inquiry, it is the opinion of the Commission that the fact that the letter is not returned to the judge has no bearing on the initial violation of the Canons of Judicial Ethics in this instance. The violation is based in part on the general disqualification provision of Canon 3C, that a judge is disqualified from sitting in any proceeding in which his impartiality might reasonably be questioned. The mere sending of the letter, by its tone, seems to put the judge on the "prosecution team" and casts doubt on the judge's ability to decide truancy cases impartially.

As to your second inquiry, it is the opinion of the Commission that where the letter has already been sent, the judge may mitigate the disqualification and therefore the violation of the Canons by taking certain actions. When truancy cases come before the judge in his capacity as judge, the judge should inform the parties of the letter; of the fact that he has not seen the signed letter; that he has no knowledge of who signed the letter and who did not; that he will never have any knowledge of these facts; that the letter was intended to be informational as to the law rather than a statement of any predisposition of truancy cases; and that each case must be judged entirely on its own facts and merits. In other words, the judge should state to the litigants, their guardians and attorneys the facts known to the judge at the time of the hearing. If after these facts are explained to these parties, the parties consent in writing for the judge to proceed without disqualification, he may do so.

As to your third inquiry, the Commission reaffirms its earlier opinion that the early warning program does not violate the Alabama Canons of Judicial Ethics and such programs may be a part of the Juvenile Court System. The judge, however, should have no participation in the actual carrying out of this program. For to do so would cast doubt on the judge's ability to decide the particular case in which he participated impartially. A judge should not participate directly in any early warning case unless court proceedings have been formally initiated and the authority of the Court has been invoked.

Due to the general nature of your fourth inquiry, the response of the Commission must be more general. It is said in the Canons that a judge's judicial responsibilities take precedence over all of his other activities. See Canon 3. He must perform these duties impartially and diligently, (Canon 3), and even the appearance of partiality or prejudgment must be avoided. In relation to the court truancy programs suggested and in addressing the school truancy problems, the judge's primary responsibility is to be the decider of facts and the person who applies the law to the facts of each case which comes before him as judge. The efforts of the community, other court personnel and any other interested persons to curb societal problems, such as truancy or those problems caused by truancy must not interfere with the judge's primary responsibility. It is against this standard that a judge must always measure any activity in which he might be asked to participate.