

## Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET  
SUITE 201  
MONTGOMERY, ALABAMA 36104

July 12, 1985

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics a judge, who is named as a defendant in a lawsuit challenging the constitutionality of a state statute, should continue to defend the lawsuit after he independently researches the issue and determines that the statute is probably unconstitutional. Particularly, you ask whether the judge should move to realign as a party plaintiff.

It is the opinion of the Judicial Inquiry Commission that a judge, who is named as a defendant in a lawsuit challenging the constitutionality of a state statute, is not required by the Canons of Judicial Ethics to move to realign himself as a party plaintiff if he believes that the statute is probably unconstitutional.

In the situation described, the judge is an unwilling litigant in our adversarial judicial system. The ultimate determination of the law of the case is up to the trial court judge, not the litigant judge. However, the judge's position as a defendant is not governed by the Alabama Canons of Judicial Ethics.

Sincerely,

JUDICIAL INQUIRY COMMISSION