

Judicial Inquiry Commission

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February 4, 1986

The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the provisions of Canon 3D of the Alabama Canons of Judicial Ethics the class representatives in a class action lawsuit may remit judicial disqualification on behalf of the entire class. Canon 3D provides in pertinent part as follows:

“A judge disqualified by the terms of Canon 3C(l)(c) or Canon 3C(l)(d) may, instead of withdrawing from the proceeding, disclose in the record the basis of his disqualification. If based on such disclosure, the parties and lawyers, independently of the judge’s participation, all agree in writing that the judge’s relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement signed by all parties and lawyers shall be incorporated in the record of the proceeding.”

The procedure for remittal of disqualification is designed to minimize the chance that a party will feel coerced into an agreement to remit the disqualification. The agreement to remit is personal to each party to the proceeding as well as to each lawyer. An attorney in his representative capacity may not agree to remit the disqualification on behalf of his client.

Therefore, based on the provisions of the Canon and the commentary to the Canon, it is the opinion of the Commission that class representatives may not in their representative capacity agree to remit judicial disqualification in a class action.

Sincerely,

JUDICIAL INQUIRY COMMISSION