

## Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an advisory opinion as to whether a judge is disqualified under the Canons of Judicial Ethics from hearing cases in which a party is represented by a lawyer who also represents a class of which the judge is a member in unrelated litigation. Two Alabama judges, as named class representatives, brought the class action suit against the State Comptroller seeking a declaratory judgment with respect to the state statutes which provide that counties may supplement state expenditures for salaries of judges within their county. The suit alleges on behalf of the class that said statutes and local enactments are unconstitutional and are in violation of the Alabama and Federal Constitutions.

It is the opinion of the Commission that due to the Rule of Necessity, the judge is not disqualified from sitting in such proceedings.

The Rule of Necessity dictates that a judge who might otherwise be disqualified from sitting in a proceeding may sit in spite of the disqualification if all other judges share the same disqualification. For instance, cases challenging budget appropriations that provide pay raises for the judiciary have been recognized as prime examples of when this rule applies. Since the pay raises affected all eligible judges, no judge was less disqualified than another. Therefore, "necessity will ... override disqualification where an attorney represents all judges in a class action seeking increased judicial compensation," J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics, 5.03 at 104 (1990).

Applying these principles to the present fact situation, the commission considers two issues; (1) whether a judge who is the named class representative or a named party or intervenor to the class action or is a monetary contributor to the class action is disqualified; and (2) whether all judges who are merely members of the class are disqualified.

Considering the first issue, it is the opinion of the Commission that a judge is disqualified from sitting in any proceeding in which the lawyer for one of the parties represents the judge as a named party or named class representative or the judge is a monetary contributor to an unrelated class action.

However, as to the second issue, judges who are merely members of the class stand in a slightly different position. They are not personally named in the unrelated action and have made no up front monetary contribution to the action. If such judges are disqualified then who is to hear a case filed by any such lawyer? This is specifically the reason for the Rule of Necessity. Since the case may not otherwise be heard, the Rule of Necessity, assuming disqualification exists, allows the original judge assigned to hear the proceeding.