

Judicial Inquiry Commission

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November 13, 1995

The Judicial Inquiry Commission has considered your request for an opinion concerning whether a judge is disqualified from hearing a case in which a party is represented by a member of a law firm when another member of that firm represents a plaintiff class of which the judge is a member in an unrelated action. You also requested an opinion as to whether a judge would be disqualified from hearing a case in which a member of the same firm represented a party if the judge is realigned to be a defendant in the unrelated class action. Two Alabama judges, as named class representatives, brought the class action lawsuit 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 disqualification is not required under the first circumstance set out above but is required under the second.

The Commission has previously decided that the mere fact that a judge is represented by a member of a particular law firm does not disqualify the judge under Canon 3C from sitting in a different case in which a party is represented by another member of the firm. Advisory Opinions 78-53, 88-337 and 93-484. The Commission likewise has held that the mere fact that a member of a law firm represents a party opponent to a judge in unrelated litigation does not cause the judge's disqualification in other cases where a different member of the firm represents a party. Advisory opinions 88-337 and 84-226. In addition, we note that in advisory opinion 95-381, the Commission has also held that a judge who is a member of a class in litigation is not disqualified from sitting in an unrelated matter in which a party is represented by the lawyer representing the class. However, if the judge is a named class representative or named party, advisory opinion 93-581 further provides, disqualification is required.

With regard to this particular litigation, it is the opinion of the Commission that a judge who is merely an absent class member is not disqualified under the Canons of Judicial Ethics from hearing cases in which a party is represented by either the lawyer representing the plaintiffs or a member of that lawyer's firm. However, a judge who is a named party to the class action, or who intervened in the suit, or who has contributed funds to the expense of litigation would be disqualified from hearing cases in which a party is represented by the attorney for the plaintiffs or a member of that attorney's firm. Other personal involvement in the class action might also cause disqualification in the unrelated suits. The Commission will consider other specific factual circumstances upon request from the affected judge.

Very truly yours,