

Judicial Inquiry Commission

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December 8, 1995

The Judicial Inquiry Commission has considered your request for a further 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 either that member or another member of that firm represents the plaintiff class of judges in the suit seeking to declare county salary supplements for judges unconstitutional. Your specific question is whether a judge is disqualified if he seeks to opt out of the class of judges who receive such supplements and to contest the attempt to declare the supplements unconstitutional. You also state that the judge has agreed to share expenses with other judges for litigation challenging the attempt to declare the supplements unconstitutional.

The Commission has previously decided 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. The Commission has also previously held that a judge is disqualified from sitting in a case in which a party is represented by an attorney who represents a party opponent to the judge in unrelated litigation. Advisory Opinion 88-337. These opinions were reached in consideration of the provision in Canon 3C(1) that a judge should disqualify himself in a proceeding in which "his impartiality might reasonably be questioned."

With regard to the particular litigation involved in your inquiry, it is the opinion of the Commission that a judge who seeks to opt out of the defendant class and to contest the attempt to declare the supplements unconstitutional, including agreeing to contribute to the expense of litigation challenging the attempt to declare the supplements unconstitutional, is disqualified from hearing cases in which a party is represented by the attorney for the plaintiff in the class action or a member of that attorney's firm. Such personal involvement in the matter in controversy in the class action constitutes a circumstance under which the judge's impartiality might reasonably be questioned in an unrelated suit. See Advisory Opinion 95-582.

Sincerely,

JUDICIAL INQUIRY COMMISSION