

Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Alabama Judicial Inquiry Commission.

Two Alabama judges have brought a civil suit against the state comptroller seeking a determination that the present system of financially compensating circuit and district judges, which includes local supplementation, is unconstitutional. The plaintiffs seek “a declaratory judgment or decree declaring that the legislative scheme of non-uniform compensation to circuit and district judge be declared unconstitutional” and an adjudication that the plaintiffs “and all other circuit and district judges they represent are entitled to the same compensation currently received by the highest compensated circuit and district judges in this state.” That action was filed in the Fifteenth Judicial Circuit. Your question is whether all of the judges of that circuit “should recuse themselves from hearing this case and request the appointment of a retired judge or lawyer who would not be affected by the outcome of this case.”

It is the opinion of this Commission that because the disqualification of every judge in the State is conceivable under these circumstances, the Rule of Necessity applies. “If no judge can be found who possesses the requisite degree of impartiality in regard to a particular case, the rule of necessity dictates that the original judge assigned to the case need not be disqualified despite his or her partiality.” J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics § 5.03 (1990). “If so, it is possible that under a ‘rule of necessity’ none of the judges or justices would be disqualified. See United States v. Will, 449 U.S. 200, 214, 101 S.Ct. 471, 480, 66 L.Ed.2d 392 (1980).” Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813, 825, 106 S.Ct. 1580, 1587, 89 L.Ed.2d 823 (1986).

“A paradigm of the rule of necessity occurs in cases challenging budget appropriations that provide pay raises for the judiciary. Obviously, any judge within the jurisdiction assigned to hear such a case would have a financial interest in its outcome, and no judge could be found who is truly impartial. Under the rule of necessity, this sort of interest in a case will not require disqualification of the judge assigned to hear it. . . . Necessity will also override disqualification where an attorney represents all judges in a class action seeking increased judicial compensation.”

Judicial Conduct at § 5.03 at 104.

This advisory opinion has been considered by and is the opinion of the entire Commission.

