

Judicial Inquiry Commission

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

In Advisory Opinion 89-356, this Commission held that a judge is disqualified from sitting in any proceeding in which a party was represented by either the judge's wife's adoptive father or that father's brother. Your question is whether you may preside over cases "in an emergency situation to protect life or property" where one of the parties is represented by your wife's adoptive father's brother, who is also your former law partner.

It is the opinion of this Commission that, despite the existence of your disqualification, you may preside in those situations where immediate action is necessary to protect life or property or to preserve the status quo of the situation and there is no other judge available who can render such immediate relief. This is but an application of the Rule of Necessity. However, once the need for immediate action no longer exists, you should recuse yourself from any further proceedings in that matter.

"The presence of judicial partiality that ordinarily would require recusal will nevertheless be tolerated and recusal avoided if necessity so requires. 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. The rule of necessity thus operates as an exception to the requirement of impartiality, prescribed by the demands of reality. * * *

According to the rule, a non-impartial judge may hear and decide a case if his or her failure to do so would result in an injustice."

J. Shaman, S. Lubet, J. Alfini, Judicial Conduct and Ethics, § 5.03 at 103-04 (1990).

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