

Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for an opinion concerning whether under the Alabama Canons of Judicial Ethics an appellate court judge is disqualified from sitting in a proceeding in certain circumstances. One of the parties to the proceeding is a professional licensure and disciplinary commission or agency. Within the past year, prior to the appellate court's receiving the appeal, the appellate judge spoke to a meeting of the professional licensure commission concerning the Administrative Procedure Act and other legal areas of concern. Instead of expenses for attending the meeting the agency or commission paid the judge an honorarium which by a small amount exceeded the actual expenses. The judge further asked whether he should inform the parties of this past association.

It is the opinion of the commission that the mere fact of the judge's prior speaking engagement with the party to the appeal does not cause his disqualification under the specific facts or circumstances. This opinion is based on Canons 3 and 4 of the Alabama Canons of Judicial Ethics.

Under the provisions of Canon 4 of the Alabama Canons of Judicial Ethics a judge may engage in activities to improve the law, the legal system and the administration of justice. Making speeches is included in the permitted activities. (Canon 4A) These activities are permitted so long as they do not adversely reflect the judge's impartiality.

Disqualification is specifically governed by Canon 3C. More particularly that Canon provides that a judge is disqualified where his disqualification is required by law or his impartiality might reasonably be questioned. Here the judge's disqualification is not required by law and a speech concerning legal issues and the law does not in and of itself cause his impartiality to reasonably be questioned.

However, other facts and circumstances may exist which could cause disqualification. The judge should review the appellate record and determine whether any factual situations exist which were specifically raised by his audience and discussed by him during the speech. If such issues were raised and commented upon by the judge during his presentation, then the judge may have inadvertently been a part of the decision making process presently on review. The existence of this condition could cause the judge's impartiality to reasonably be questioned.

In any event, the judge should inform the parties of his prior relationship.