

## 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, a judge is disqualified from sitting in a proceeding which determines a fellow Justice's authority to serve as a member of the Judicial Inquiry Commission and, if so, may a member of the Court who has a complaint pending against him before the Commission, sit upon a matter that directly affects the membership of the Judicial Inquiry Commission? The pending matter concerns a request for an opinion of the justices as to whether the former appointee of the Court to the Commission continues in office until the end of his term or whether the Court should appoint a new member to take his place.

It is the opinion of the Commission that the Alabama Canons of Judicial Ethics do not prohibit members of the Alabama Supreme Court from sitting in matters concerning the authority of the Court, except where a justice may have previously stated an opinion as to the proper resolution of the matter. Further, it is the opinion of the Commission that a justice is disqualified from sitting in a matter concerning the makeup of the commission if he knows, from the Commission, that there is a complaint against the justice pending before the Commission. Mere hearsay and rumor are insufficient to cause disqualification.

The Court is frequently called upon to decide its own authority within the limits prescribed by the legislature and the constitution. The issue at hand is whether, due to the amending of Amendment 328, as it concerns the makeup of the commission, there exists a vacancy on the Commission as to the court's appointee. The person presently holding the slot to which the Supreme Court's appointment is made is a justice of the Supreme Court appointed under Amendment 328. The issue being considered is thus one of the court's authority to appoint to a position which receives no remuneration, only reimbursement for actual expenses. Since the matter is one which arises in an official capacity context and the justice holding the seat has no personal stake in the outcome, there is no reason to question the court's ability to sit impartially to decide the issue. However, if any justice has previously expressed an opinion as to the merits of the matter to be decided, then that justice is disqualified in that the previous expression of opinion gives the impression that the justice has already decided the issue and is no longer impartial. That justice is disqualified under the provisions of Canon 3C requiring that a judge is disqualified if "his impartiality might reasonably be questioned." An expression of opinion as to the merits of the issue causes a judge's impartiality to reasonably be questioned.

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The Commission has previously held that the mere fact that a litigant or other person states that a complaint has been filed with the Commission against a judge does not cause the judge to be disqualified in proceedings involving that litigant or other person. However, if a justice or judge knows that such a complaint is pending in that he or she has been contacted by the Commission or its staff, then disqualification would be required.

Yours very truly,

JUDICIAL INQUIRY COMMISSION