



INSPECTOR GENERAL REPORT

2010-09-0233

May 17, 2012

IURC ETHICS CONFLICT OF INTEREST

Inspector General Staff Attorney Todd Shumaker, after an investigation by Special Agent Darrell Boehmer, reports as follows:

An investigation into the operations of the Indiana Utility Regulatory Commission (IURC) was initiated as a result of a series of complaints submitted to the Office of Inspector General (OIG) regarding the activities of IURC current and former employees. This report addresses exclusively the allegations that Scott Storms, former IURC General Counsel, violated ethics rules on conflicts of interest in pursuing employment with Duke Energy Indiana, Inc. (Duke).

The OIG is responsible for investigating allegations of a violation of the Code of Ethics (Code) and filing ethics complaints with the State Ethics Commission (SEC). I.C. 4-2-7.

On August 27, 2010 Scott Storms requested formal advice from the State Ethics Commission at its monthly meeting scheduled for September 9, 2010 on the appropriateness of leaving employment with the IURC to accept a position with Duke, an entity that is regulated by the IURC. In his request, Storms cited to

a prior opinion issued by the SEC, 10-I-6, in which the SEC had found that only the IURC's appointed commissioners (Commission or Commissioners)—not the staff—make regulatory decisions at the agency.¹

Storms testified to the SEC at the September meeting that he screened himself from any Duke proceedings at the IURC once he applied for the position at Duke; however, he did not mention any of the discussions he had with Duke personnel about the position over the course of the preceding months. Based only on the representations Storms made in his testimony, the SEC issued Formal Advisory Opinion 10-I-11 in which it determined that he was not prohibited by the Code from accepting employment with Duke immediately upon his departure from state employment. The SEC did advise Storms, though, that he would still be subject to the restriction in I.C. 4-2-6-11(c) which prohibited him from representing or assisting Duke in any particular matters in which he had personally and substantially participated during his time with the IURC.

In September of 2010, a complaint was submitted to the OIG Hotline raising concerns about Storms' employment with Duke.

The OIG commenced an investigation to look into the allegations that Storms had begun negotiating employment with Duke prior to submitting his application for the position, and Special Agent Darrell Boehmer was assigned. After reviewing the state email accounts of IURC employees as well as internal emails provided by Duke in response to a subpoena issued by the OIG, the OIG filed an ethics complaint with the SEC against Storms on October 14, 2010,

¹ I.C. 8-1-1-5(a) charges the Commissioners exclusively with making regulatory decisions for the agency stating, “[t]he commission shall in all controversial proceedings heard by it be an impartial fact-finding body and shall make its orders in such cases upon the facts impartially found by it.”

alleging violations of I.C. 4-2-6-9(a) and (b) (Complaint). Specifically, the Complaint indicated that prior to formally applying for the position, Storms had begun negotiating for employment with Duke as he continued to participate in matters in which Duke or Storms himself had a financial interest in the outcome of those matters. The Complaint indicated further that Storms had failed to both notify his appointing authority of the potential conflict and seek an advisory opinion from the SEC.²

The evidence compiled by the OIG in the course of its investigation was presented to the SEC at a public hearing on April 14, 2011. As a result of that public hearing, the SEC issued a Final Report in which it found Storms had committed two violations of I.C. 4-2-6-9(a) and one violation of I.C. 4-2-6-9(b) and sanctioned Storms with a bar from future state employment and a fine in the amount of Twelve Thousand One Hundred Twenty Dollars (\$12,120).

On June 10, 2011 Storms petitioned the Marion Superior Court for judicial review of the SEC's decision, consistent with I.C. 4-21.5-5. A hearing was held on the petition on October 20, 2011 before the Honorable Patrick McCarty of Marion Superior Court No. 3. Judge McCarty issued the Court's *Findings of Fact and Conclusions of Law* on January 25, 2012 affirming the SEC's findings and sanctions in all respects. The order is attached to this report.

² The Complaint filed by the OIG was based exclusively on conflict of interest issues created by Storms negotiating for employment with Duke while he continued to work for the IURC on Duke matters and did not encompass postemployment issues. I.C. 8-1-1-5(a) places in the hands of the Commissioners—and not the IURC General Counsel or administrative law judges—the authority to make regulatory decisions on behalf of the agency. Consequently, the investigation revealed nothing which controverts the SEC's analysis in 10-I-11 that Storms had not made a regulatory decision on behalf of the IURC.

The deadline for Storms to appeal the order of the trial court to the Indiana Court of Appeals having expired, this portion of the investigation is closed.

Dated this 17th day of May, 2012.

APPROVED BY:

/s/ David O. Thomas, Inspector General

3. Also between March and September of 2010, Storms was participating in matters involving Duke Energy Indiana, Inc. ("Duke").
4. Duke had an opening for an attorney position in April of 2010.
5. Kelley Karn, a Deputy General Counsel with Duke, knew Storms and interacted with him while he was employed at the IURC. On or about March 31, 2010, Karn called Storms to inquire and let him know that Duke would have an opening and wondered whether he or anyone else at the IURC might be interested.
6. Once the position was officially opened, Karn sent Storms an email letting him know of the opening, the date that it was open until, and how to apply. Storms indicated that he was interested and wanted to know more about the position. Karn and Storms met for lunch and discussed the position.
7. Michael Reed, then Commissioner of the Indiana Department of Transportation ("INDOT"), had learned of another possible position with Duke in early March of 2010 and expressed his interest in that position. Prior to his tenure at INDOT, Reed was the Executive Director of the IURC and worked with Storms and IURC Chairman David Hardy.
8. During his interview process with Duke in April, Reed became aware of the open attorney position. Reed indicated in an April email to Storms that "[m]y sense is [that] they are very interested in you." Storms was excited about the possibility of working for Duke.
9. The application deadline for Duke's attorney position was set to close on April 20, 2010.
10. Shortly before that date, Storms called Karn and indicated that he had spoken with Hardy and was wondering whether he needed to apply by the deadline. However, Karn was

advised that she should let Storms know that he did not have to apply by the deadline, but that Duke still might be willing to consider him.

11. Karn had a follow-up conversation with Storms advising him that the deadline was flexible.
12. On April 20, 2010, Storms uploaded his cover letter and resume onto Duke's website, but did not submit an application at that time.
13. Reed accepted a position as the President of Duke Energy of Indiana in May of 2010.
14. In late May of 2010, Karn told Storms that the executive management of Duke was unwilling at that time to consider him for the open attorney position.
15. After Reed began working for Duke in June, he wanted to have conversations internally as to whether or not the company would hire Storms.
16. On June 27, 2010, Reed sent Storms an email stating that "I am still working the 'you' issue with Duke mgt." He further stated in that email, "I don't sense a concern about making this happen, rather more of an issue of when and how." He concluded by advising Storms to "[h]ang in there, still think this will get done."
17. Storms admitted in his testimony before the Commission on April 14, 2011, that he identified a potential conflict when he received the June 27 email from Reed. He stated, "I thought there might be the potential...depending on what this is about that it would be necessary for me to screen off." Storms did not screen off of Duke matters or seek an advisory opinion from the Commission about that potential conflict.
18. In July of 2010, Karn again contacted Storms to discuss the possibility of Storms being hired in as an attorney for Duke.

19. At the end of July, Karn contacted Storms about formally applying for the position at Duke.
20. On July 27, 2010, Reed sent Storms an email and copied Hardy stating, "Houston,,, we have (almost) landed! (Yea!!!)"
21. On July 30, 2010, Hardy sent Storms an email and concluded it by telling Storms, "[a]s to this ethics bullshit, we will get through it—hang in there."
22. On August 3, 2010, Storms informed Hardy that he had submitted a memo on his plans to pursue the attorney position with Duke, and at that time, Storms requested to be screened off from pending cases involving Duke.
23. On or about August 5, 2010, Storms applied for the open attorney position at Duke.
24. Storms requested a formal advisory opinion from the Commission on August 27, 2010, "regarding [his] ability to accept a position with a utility that is regulated by the [IURC]." In that communication requesting an advisory opinion, Storms failed to include information concerning his communications with Duke regarding the open attorney position.
25. In September of 2010, Storms testified under oath in a public meeting held to discuss Storms' request for an advisory opinion. Storms did not testify at that hearing about his communications with Duke about his prospective employment.
26. The Commission issued a Formal Advisory Opinion, No 10-I-11, addressing the issue of Storms' intended employment with Duke and finding that Storms would not be in violation of Indiana Code Sections 4-2-6-6 or 4-2-6-9 by leaving state employment to work for Duke, so long as he observed certain conditions. The Commission further found

that Storms' intended employment with Duke would not violate Indiana Code Section 4-2-6-11.

27. Storms worked for Duke from September 27, 2010, until he was terminated in mid-November of 2010.

28. On October 14, 2010, the Inspector General ("IG") filed an ethics complaint against Storms.

29. The IG specifically alleged in that complaint that Storms:

- 1) Violated IC 4-2-6-9(a) when he participated in a decision or vote in which he had knowledge that:
 - a. he had a financial interest in the outcome of the matter(s), TO WIT: participated in matter(s) involving Duke Energy Indiana, Inc. (Duke) before the IURC when he had a financial interest arising from employment or prospective employment at Duke for which negotiations had begun; or
 - b. a person or organization with whom he was negotiating or had an arrangement concerning prospective employment had a financial interest in the outcome of the matter(s); TO WIT: participated in matter(s) involving Duke before the IURC when he was negotiating or had an arrangement concerning prospective employment with Duke, when Duke had a financial interest in the outcome of the matter(s);

OR

- 2) Violated IC 4-2-6-9(b) by failing to notify his appointing authority of a potential conflict of interest and/or seeking an advisory opinion from the State Ethics Commission (SEC) by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter.

30. Storms filed a motion to dismiss the Complaint by the IG, which was denied by the Commission.

31. The Commission conducted a public hearing on April 14, 2011, and heard testimony.

32. On May 12, 2011, the Commission issued its Final Report finding that Storms committed all three ethics violations.
33. The Commission imposed a penalty of \$12,120.00, which was triple the amount that Storms obtained an increased salary from the time he left the IURC for the duration of his employment at Duke. The Commission also banned Storms from gaining future employment with the State of Indiana.
34. Storms filed his Verified Petition for Judicial Review on June 10, 2011.

Conclusions of Law

1. For judicial review of an agency determination under the Administrative Orders and Procedures Act (the "AOPA"), "the burden of demonstrating the invalidity of agency action is on the party to the judicial review proceeding asserting invalidity." Ind. Code § 4-21.5-5-14(a). Thus, petitioner has the burden of proof in this matter.
2. A court may grant relief on judicial review only if the party petitioning for review demonstrates that it was prejudiced by agency action that was

(1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence.

I.C. § 4-21.5-5-14(d).

3. The Court is bound by the agency's findings of fact if those findings are supported by substantial evidence. *Hamilton County Dep't of Public Welfare v. Smith*, 567 N.E.2d 165, 168 (Ind. Ct. App. 1991).
4. However, this Court is not limited to those facts stated in the Commission's Report, but can look to the entire record that the Commission had when rendering its decision. *See*

- I.C. § 4-21.5-5-11; *Beelman Truck Co. v. Elmer Butcha Trucking Inc.*, 611 N.E.2d 655, 658 (Ind. Ct. App. 1993) (noting that the court's function "is to examine the record to determine whether there is a reasonably sound basis of evidentiary support.").
5. Substantial evidence is something "more than a scintilla, but something less than a preponderance of evidence." *State v. Carmel Healthcare Mgmt., Inc.*, 660 N.E.2d 1379, 1383 (Ind. Ct. App. 1996); *see also Bivens v. State*, 642 N.E.2d 928, 949-950 (Ind. 1994) (stating that to establish by a preponderance of the evidence means that something is more likely true than not true).
 6. In Formal Advisory Opinion 10-I-7, the Commission adopted the definition of "negotiation" found in Black's Law Dictionary, 8th Edition: "to confer with another so as to arrive at the settlement of some matter' or 'to arrange for or bring about through conference, discussion, and compromise <negotiate a treaty>.'" For purposes of Indiana Code Section 4-2-6-9(a), the Commission has determined that negotiations commence for a state employee as soon as the prospective employer begins discussion the position with the employee. *See LTV Steel Co. v. Griffin*, 730 N.E.2d 1251, 1257 (Ind. 2000) (noting that "[t]he legislature has entrusted to the State Ethics Commission the authority to establish, interpret, and enforce a code of ethics for the conduct of state business.")
 7. An agency action is arbitrary or capricious only if it constitutes a willful or unreasonable action, is without consideration and in disregard of the facts and circumstances of the case, or is without some basis that would lead a reasonable or honest person to such action. *Indiana Board of Pharmacy v. Crick*, 433 N.E.2d 32, 39 (Ind. Ct. App. 1982).
 8. Storms first argues that the Commission's conclusion that Storms violated Indiana Code Section 4-2-6-9(a) is arbitrary and capricious, and not supported by substantial evidence.

Storms does not contest that "he served as the ALJ on Duke cases between April and September 2010 and that Duke had a financial interest in the outcome of these decisions."

Rather, Storms argues that the Commission relied on communications that were irrelevant and that Storms communications with Karn and Reed did not constitute negotiations. This Court disagrees.

9. Storms began negotiating his prospective employment with Duke when he was approached by Karn in March about the open attorney position at Duke and expressed his interest in that position. Indiana Code Section 4-2-6-9(a) is clear that a state employee may not participate in any decision or vote if the state employee has knowledge that "the employee" or "any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment" has a financial interest in the outcome of that matter. I.C. § 4-2-6-9(a)(1) and (4). A financial interest includes "an interest arising from employment or prospective employment for which negotiations have begun." I.C. § 4-2-6-1(a)(10).
10. In March, Karn called Storms to inquire and let him know that Duke would have an opening and wondered whether he or anyone else at the IURC might be interested. Karn provided Storms with information about the position and met with him for lunch to discuss it. When the April 20 deadline was approaching, Storms called Karn and wondered whether he needed to apply by the deadline to be considered. Karn had a follow-up conversation with Storms advising him that the deadline was flexible and that Duke still might be willing to consider him. Storms was advised by Karn in late May that executive management was unwilling to consider him for the open attorney position at that time.

11. Although initially approach by Karn, the record demonstrates that Michael Reed served as the catalyst to Storms' reconsideration for the position in June once he started working as Duke's President. Quite telling is the June 27, 2010 email that Reed sent to Storms as the President of Duke: "I am still working on the 'you' issue with Duke mgt." He concluded that email by telling Storms to "hang in here, still think this will get done." Shortly thereafter, Storms was contacted by Karn and renewed communication with her about formally applying for the position.
12. Over an approximately four month period, Storms engaged in negotiations with Duke about his prospective employment while simultaneously participating in decisions on Duke matters as an ALJ. *See Black's Law Dictionary*, 8th Ed. (defining negotiation as "'to confer with another so as to arrive at the settlement of some matter' or 'to arrange for or bring about through conference, discussion, and compromise <negotiate a treaty>.'");
13. This Court agrees with and defers to the exclusive authority of the Commission to interpret the Code of Ethics and its finding that negotiations for prospective employment are dealings conducted between two or more parties for the purpose of reaching an understanding and not merely a formal submission of an employment application. *See LTV Steel Co.*, 730 N.E.2d at 1257. The fact that Storms may not have formally submitted his application to Duke until August does not diminish or negate the fact that he was negotiating his prospective employment over that four month period with Karn and Reed. Thus, the Commission's finding that Storms violated Indiana Code Section 4-2-6-9(a) is supported by substantial evidence and is not arbitrary or capricious.
14. Storms next challenges that the Commission's conclusion that Storms violated Indiana Code Section 4-2-6-9(b) is not supported by substantial evidence and is not in accordance

with Indiana law. Storms argues that there is no evidence on the record that Storms identified a potential conflict of interest prior to screening off in August. This argument is without merit.

15. Indiana Code Section 4-2-6-9(b) states that a state employee “who identifies a potential conflict of interest shall notify the person’s appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter.”
16. In this case, Storms admitted in his testimony to the Commission that in March of 2010 he was “absolutely” cognizant of his ethical duty to screen off of cases if he applied to work for Duke. Although he did not formally apply in April of 2010, he did upload his resume and a cover letter to the Duke website. Moreover, on May 27, 2010, Storms received an email from IURC Deputy General Counsel, Loraine Seyfried, discussing a state employee’s ethical obligation relating to employment or prospective employment. She referred to a 1990 Ethics Opinion, which stated that a financial interest includes “an interest arising from employment or *prospective employment* for which negotiations have begun.” (emphasis added).
17. More directly, Storms admitted in his testimony at the hearing before the Commission that he identified a potential conflict when he received the June 27 email from Reed concerning the “you” issue. Specifically, he testified, “I thought there might be the potential...depending on what this is about that it would be necessary for me to screen off.” Yet, and again, he did not screen off or seek an advisory opinion from the Commission regarding that potential conflict.

18. It can be reasonably inferred from his testimony and actions that he identified a potential conflict of interest. Yet, he did not both notify his appointing authority and seek an advisory opinion from the Commission on the matter as required by statute. Any assertion or belief by Storms that he did not cross the ethical line does not diminish or negate his identification of a potential conflict. Thus, the Commission's finding that Storms violated Indiana Code Section 4-2-6-9(b) is supported by substantial evidence and is not arbitrary or capricious.
19. Storms also argues that the evidence before the Commission demonstrates that he complied with Indiana Code Section 4-2-6-9(b) by notifying his appointing authority and seeking a formal advisory opinion from the Commission regarding his application for the Duke position. This Court disagrees. Storms never sought a formal advisory opinion from the Commission regarding the potential conflict arising out of his discussions and negotiations with Duke in seeking prospective employment. The fact that he sought an advisory opinion after the fact for another issue is of no consequence because it did not relate to or address the relevant facts and circumstances at issue.
20. Storms's last argument with respect to Indiana Code Section 4-2-6-9(b) maintains that the Commission is bound by its Formal Advisory Opinion No. 10-I-11 and, thus, the later finding that he violated Indiana Code Section 4-2-6-9(b) is contrary to law. This argument is also without merit. 40 Indiana Administrative Code Section 2-2-1(h) does state that "[a]ny opinion rendered by the commission, until amended or revoked, is binding on the commission in any subsequent allegations concerning the person who requested the opinion and who acted on it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion or testimony before the

commission.” Title 40 clarifies that an advisory opinion is conditioned upon all of the relevant facts and circumstances related to the opinion being disclosed to the Commission. 40 I.A.C. 2-2-2(g)(2).

21. 40 I.A.C. 2-2-1(h) is not applicable here because it only provides safe harbor from the date of the request moving forward. In this case, the actions related to the complaint at issue filed by the Inspector General arose out of Storms’ actions and omissions before he requested advice from the Commission. Consequently, it is impossible for Storms to have relied on that decision. Moreover, Formal Advisory Opinion No. 10-I-11 is not binding upon the Commission because Storms omitted material facts. Nowhere in his letter to the Commission, the memorandum, or his sworn testimony to the Commission did he mention that he had communications with Duke employees Karn and Reed about the position on various occasions throughout the spring and summer of 2010 before submitting a formal application in August. Storms cannot now seek refuge from an advisory opinion issued by a Commission that did not have all of the relevant facts.
22. Therefore, the Commission’s finding that Storms violated Indiana Code Section 4-2-6-9(b) is supported by substantial evidence and is in accordance with Indiana law.
23. Storms further argues that the sanctions imposed on Storms by the Commission are an abuse of discretion. Storms cites to a number of previous final reports issued by the Commission in an attempt to show that the sanctions imposed on Storms were inconsistent with previous sanctions imposed.
24. Initially, the cases cited by Storms are not a part of the administrative record that the Commission considered below when making its decision. *See* Ind. Code § 4-21.5-5-13(a)(2) (noting that the record includes any other documents identified by the agency as

having been considered by it before its action and used as a basis for its action). As such, Storms has waived his right to rely on that authority and should not be able to do so now during judicial review. *See, e.g., C.C. v. State*, 826 N.E.2d 106, 109 (Ind. Ct. App. 2005) (noting that the failure to object to lack of jurisdiction over a particular case waives that issue of judicial review).

25. In any event, the cases cited by Storms have little persuasive effect. The Commission did not have the statutory authority to bar an employee from future employment with the State until 2005. *See* I.C. 4-2-6-12 (as amended by P.L. 222-2005, Section 12). Furthermore, the 2005 amendment to the statute empowered the Commission to triple the value of any benefit received by a state employee as a sanction. *See id.* All of the cases cited by the Plaintiff, except for one, occurred before the 2005 Amendment. Any suggestion that the Commission is being inconsistent or arbitrary by imposing a ban on future state employment is unfounded.

26. Indiana Code Section 4-2-6-12 authorizes the Commission to impose “a civil penalty upon a respondent not to exceed three (3) times the value of any benefit received from the violation” and “bar[ring] a person from future state employment” upon a finding of an ethics violation. That statute does not require and Storms fails to cite any persuasive authority that the Commission is required to consider aggravating or mitigating circumstances. Nonetheless, Storms’ argument to the Commission through counsel did not focus on mitigation, but rather focused on his assertion that he did not violate the law (Record p. 972-988). The Commission did not abuse its discretion when imposing its sanctions after it found that Storms did commit ethical violations.

27. Storms was not just any state employee, but was a long-time IURC employee and served as the General Counsel and Chief ALJ at the time that he began negotiating his prospective employment with Duke. He held a high-profile position and had a leadership role with a state agency, which governed a highly regulated industry. While engaging in negotiations and being courted by Duke, he admittedly participated in Duke matters.
28. Storms' actions violated the public's trust and harmed the IURC's credibility as an independent governing body. His actions inevitably led Hoosiers to question the IURC, its relationship with Duke, and its independence from Duke. It is that appearance of impropriety and his violation of the public trust that support the imposition of treble damages and his ban from future state employment. *See, e.g., State ex rel. Kirtz v. Delaware Circuit Court No. 5*, 916 N.E.2d 658, 661 (Ind. 2009) (noting that the appointment as special prosecutor created the appearance of impropriety because the totality of circumstances allowed an objective observer reasonably to question a familial relationship would affect a prosecution); *see also Robertson v. Wittenmyer*, 736 N.E.2d 804, 809 (Ind. Ct. App. 2000) (noting that a strict interpretation of the disqualification rule was necessary because of the public's perception and the appearance of impropriety that arises in situations in which an attorney switches sides).
29. The Commission did not abuse its discretion by imposing a penalty of \$12,120.00 and banning Storms from gaining future employment with the State.
30. Storms' final argument concerns a claim that the Commission's denial of his motion to dismiss the Complaint for lack of probable cause was not in accordance with Indiana law. Storms argues that the Complaint should have been dismissed on the basis that Storms was denied due process when Commissioner Keith participated in the probable cause

hearing, despite her alleged conflict of interest, and alleged violation of her ethical obligation under Indiana law. This Court disagrees.

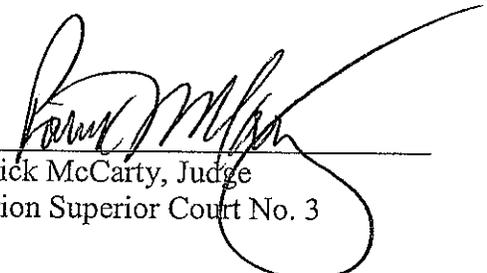
31. Four of five Commissioners, including Priscilla Keith, participated in Storms' probable cause hearing. Commissioner Keith had applied for and sought the Senior Counsel position at Duke that Storms' was ultimately hired to fill. Although she participated in the probable cause hearing, she recused herself from the public hearing. The three remaining Commissioners who discussed the issues and voted in favor of probable cause did not know that Commissioner Keith had applied for the position that Storms received.
32. While AOPA governs many proceedings conducted by administrative agencies in Indiana, it exempts from its application certain agency actions including "a decision to issue or not issue a complaint, summons, or similar accusation." I.C. § 4-21.5-2-5(8). At the time the Complaint was filed by the IG and until a majority of the Commission voted to find probable cause at the conclusion of the hearing, it remained confidential pursuant to Indiana Code Section 4-2-6-4(b)(2)(E). It was only upon a finding of probable cause by the Commission that the complaint became a justiciable accusation of an ethics violation. This falls within a complaint, summons, or similar accusation under Indiana Code Section 4-21.5-2-5(8). As such, the hearing where the Commission found probable cause to support an ethics violation against Storms was not bound by AOPA and Indiana Code Section 4-21.5-3-9.
33. Nonetheless, even if AOPA applies, the test for determining whether an ALJ should disqualify herself is whether an objective person, knowledgeable of all the circumstances, would have a reasonable basis for doubting the Commissioner's impartiality. *See State v. Shackelford*, 922 N.E.2d 702, 707 (Ind. Ct. App. 2010), *reh'g and trans. denied*.

However, there is a strong presumption that a judge is unbiased and unprejudiced. *Cook v. State*, 612 N.E.2d 1085, 1088 (Ind. Ct. App. 1993). Storms has failed to rebut that presumption and establish an actual bias or prejudice from Commissioner Keith's conduct. While Storms relies heavily on the fact that Commissioner Keith applied for the same position, that fact alone does not demonstrate actual bias or prejudice. In fact, Storms points to no evidence on the record that Commissioner Keith was even aware at the time of the probable cause hearing that the position she had applied for at Duke in April—six months earlier—was the same position Storms had applied for in August. Furthermore, a reasonable person would not have a reasonable basis for doubting her impartiality simply because she applied for the same position.

34. Regardless, even assuming for the sake of argument that Commissioner Keith did have a conflict of interest, the statutory requirements of Indiana Code Section 4-2-6-4(b)(2)(C) were still met. As Storms concedes, a majority of the Commissioners found that probable cause supported the Complaint. Further still, those three Commissioners considered and discussed the issue without knowing that Commissioner Keith had applied for the same position. The Commission properly denied Storms' motion to dismiss the complaint.
35. The Commission's findings that Storms violated Indiana Code Sections 4-2-6-9(a) and (b) were supported by substantial evidence and were not arbitrary or capricious.
36. Therefore, this Court affirms the decision by the Commission to impose a penalty of \$12,120.00 and to ban Storms from future employment with the State.

SO ORDERED this ___ day of ~~October, 2011.~~

1/25/12


Patrick McCarty, Judge
Marion Superior Court No. 3