

## **Office of Government Ethics**

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### **Letter to a Deputy Ethics Official**

**dated January 21, 1981**

This Office received your letter of January 9, 1981, request -ing an opinion on the application of 18 U.S.C. § 207(c) to a particular fact situation involving a former member of a Commission who left the Commission less than one year ago.<sup>1</sup>

You stated in your letter that a self-regulatory organization ("SRO") subject to regulation by the Commission is desirous of securing the services of the former Commissioner as an expert witness in connection with a disciplinary proceeding brought by the SRO against one of its members. The disciplinary proceeding is currently pending before a hearing panel established by the SRO pursuant to [statutory citation omitted]. Any disciplinary action taken by the SRO against its member as a result of this proceeding is subject to review by the Commission on its own motion or upon application of an aggrieved person. The Commission's review "may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to dismiss the proceeding or set aside the action of the self-regulatory organization." [Statutory citation omitted.]

In your letter you specifically requested our opinion as to whether the testimony of the former Commissioner before the SRO disciplinary panel would be considered a communication with or appearance before the Commission prohibited by 18 U.S.C. § 207(c) since part of the record of the disciplinary proceeding may come before the Commission upon review.

Section 207(c) in part states that an appearance or communication must be made by the former employee before or to "the Department or agency in which he served as an officer or employee, or any officer or employee thereof" before the appearance or communication is prohibited. From our review of the statute establishing the regulatory relationship between the Commission and the SRO's, a disciplinary panel of an SRO, while established under rules approved by the Commission, cannot be the "agency or Department" as those terms are used in 18 U.S.C. § 207(c) and defined in 18 U.S.C. § 6. Further, you have indicated that in the

past year only 2 of the 460 disciplinary actions taken by all SRO's have reached the Commission. Under these circumstances, a statement to the panel which may or may not come before the Commission in the form of a record of the proceedings cannot reasonably be equated to an appearance or communication to the Commission. Therefore, his acting as an expert witness at the disciplinary hearing would not be prohibited merely because there is the remote possibility that the record of the proceeding may be reviewed by the Commission.

The former Commissioner should be reminded, however, that he may not appear in person before the Commission should the disciplinary panel's decision reach the Commission and they wish to review more than the record of the hearing.

We appreciate your assistance in securing the additional information necessary for our determination in this matter.

Sincerely,

J. Jackson Walter  
Director

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**1** Members of the Commission are Senior Employees designated by 18 U.S.C. § 207(d), as amended by the Ethics in Government Act of 1978, and therefore subject to the restrictions of section 207(c).