

BEFORE THE JUDICIAL INVESTIGATION COMMISSION OF WEST VIRGINIA

**IN THE MATTER OF:
DONALD K. BISCHOFF
FAMILY COURT JUDGE FOR NICHOLAS COUNTY**

COMPLAINT NO. 69-2010

These matters are before the Judicial Investigation Commission upon complaints filed on May 25, 2010, setting forth certain allegations against Donald K. Bischoff, Family Court Judge for Nicholas County. The complaint alleged that the Family Court Judge represented an individual as an attorney in a domestic relations matter and later while serving as Family Court Judge heard a case between the same two parties.

Upon receipt of the complaint a review was conducted pursuant to the Rules of Judicial Disciplinary Procedure. The investigation revealed that the Family Court Judge as a private lawyer represented one of the parties in a divorce action filed in Nicholas County on April 20, 1988. The action was later dismissed on January 7, 1992. On January 1, 2009, the Family Court Judge took office and one of the cases pending was a domestic relations case between the individual he had represented while a private attorney and her husband. He conducted a final hearing on the action on May 18, 2009. The circuit court remanded the case to the family court by order entered November 20, 2009. The Family Court held evidentiary hearing on March 15, 2010 and March 17, 2010. The Family Court Judge had forgotten he represented the person and neither that individual nor her counsel nor her husband or his counsel pointed that out to the Family Court Judge. The first time the Family Court Judge learned he had represented the

parties was when he received the judicial complaint. A contested final hearing upon the alimony remand was held in the Family Court on May 17, 2010. At the time the Family Court Judge announced the court's findings of fact and conclusions of law and decision on the remand issue. Approximately one week later on May 25, 2010, the judicial complaint was filed.

The complaint was reviewed by the Judicial Investigation Commission at its meeting on July 9, 2010, and it was determined that there is probable cause to believe that Family Court Judge Donald K. Bischoff, violated Canon 3E of the Code of Judicial Conduct. This Canon states in relevant part:

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

E. Disqualification. - (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it . . .

It was further determined that formal discipline was not appropriate under the circumstances. The Judicial Investigation Commission determined that pursuant to Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure, a written admonishment would be given to Family Court Judge Donald K. Bischoff.

It is therefore the decision of the Judicial Investigation Commission that Family Court Judge Donald K. Bischoff be and he hereby is admonished for this conduct as fully set forth in the matters as asserted herein the complaints filed in this matter on May 25, 2010.

Fred L. Fox, II

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

July 20, 2010
Date