



JUDICIAL INVESTIGATION COMMISSION

Room E-400, State Capitol

Charleston 25305

April 14, 1988

Re: JIC Advisory Opinion 1988-01

Dear

In your letter to counsel to the Judicial Investigation Commission dated April 3, 1988, you request an advisory opinion relative to Canon 3B(3) of the Judicial Code of Ethics. That Canon states:

A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

In your letter you state that you are aware of unprofessional conduct by judicial officers. You inquire about your duty and proper course of conduct under the Canon.

The Commission could find no case law which construes Canon 3B(3) of the Judicial Code of Ethics. The language in the Canon is unambiguous and clear and should therefore be given its meaning as written. While the language does not appear to be mandatory but directory,* it does place a duty on a judge to initiate appropriate disciplinary measures against a judge or lawyer if the judge becomes aware of unprofessional conduct.

* See e.g. The Code of Professional Responsibility, Disciplinary Rule 1-103, which places a mandatory duty on a lawyer who possesses unprivileged knowledge of misconduct by an attorney to report that knowledge to a tribunal or other authority empowered to investigate or act upon the violation. This section of the Code of Professional Responsibility also places a mandatory duty on an attorney to reveal unprivileged knowledge or evidence concerning misconduct of a lawyer or judge to fully reveal the knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

April 14, 1988
Page Two

Moreover, Canon 1 of the Judicial Code of Ethics states that "[a] judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective."

Several years ago, the Canon was utilized by a retired chief justice to file a complaint against a sitting circuit judge in this jurisdiction. As you know, the Commission has also received a complaint from you against a circuit judge.

It is hoped that this will address the inquiry which you have made to the Commission. If there is any question concerning this correspondence, please feel free to contact the Commission.

Very truly yours,



DAN C. ROBINSON, Chairman
West Virginia Judicial
Investigation Commission

DCR:lb