



JUDICIAL INVESTIGATION COMMISSION

Room E-400, State Capitol

Charleston 25305

November 13, 1989

Re: JIC Advisory Opinion 1998-04

Dear

Your letter to Chief Justice requesting an advisory opinion has been referred to the Judicial Investigation Commission for review. In that correspondence you seek an advisory opinion regarding whether or not it would be unethical for you to submit a letter to the presiding Federal judge regarding the character of

That request was reviewed by the Judicial Investigation Commission at its meeting on October 27, 1989.

As you indicate in your correspondence, Canon 2 of the Judicial Code of Ethics is the controlling standard in this matter. That Canon says in pertinent part:

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

- B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

The commentary following that section of Canon 2 indicates that the testimony of a judge as a character witness injects the prestige of his office into a proceeding in which he testifies and may be misunderstood to be an official testimonial. The Canon, however, does not afford a judge privilege against testifying in response to an official summons.

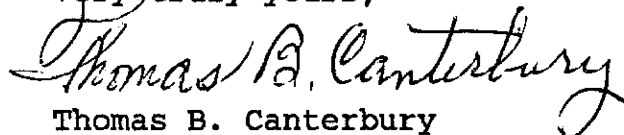
November 13, 1989
Page 2

After reviewing your letter and the Canon, the Judicial Investigation Commission feels that the language of Canon 2 prohibiting a judge from voluntarily testifying as a character witness would likewise prohibit the judge from sending a letter to the presiding Federal judge regarding the character of an individual. For that reason, the Judicial Investigation Commission responds to your inquiry by stating that it would not be appropriate under the language contained in Canon 2 for you to submit a letter regarding the character of _____ to the presiding Federal judge.

This interpretation of Canon 2 has also been followed by other jurisdictions. For example the Florida Commission on Standards of Conduct Governing Judges has stated that "good character letters" signed by circuit judges sent on behalf of a Florida attorney convicted of income tax evasion "violated the spirit and intent of Canon 2B." Op. 75-6 Commission on Standards of Judicial Conduct (Fla. March 27, 1975). Judicial disciplinary commissions in other states have issued similar advisory opinions regarding situations similar to your inquiry.

It is hoped that this response will satisfactorily answer the questions which you have raised in your correspondence. If there is any further question regarding this matter, do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas B. Canterbury". The signature is written in dark ink and is positioned above the printed name and title.

Thomas B. Canterbury
Chairman

CRG/bl