



JUDICIAL INVESTIGATION COMMISSION

Room E-400, State Capitol

Charleston 25305

November 11, 1991

Re: JIC Advisory Opinion 1991-12

Dear

In a letter to Counsel for the Judicial Investigation Commission dated October 16, 1991, you request an advisory opinion concerning a magistrate assistant's husband engaging in the business of serving process. In that correspondence you state that you have been asked by two magistrates if it is appropriate for the spouse of their assistant to serve process or would the fact that their assistant's spouse served process cause an appearance of impropriety.

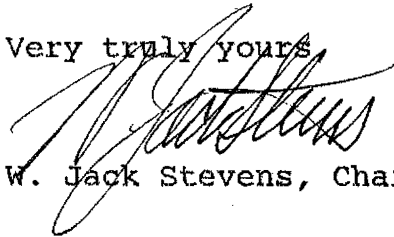
Your request for an advisory opinion was considered by the Judicial Investigation Commission at its most recent meeting. Based on the information which you have provided in your October 16, 1991, letter, the Commission is of the opinion that it would be improper for the spouse of the magistrate assistant to engage in the business of serving process in the magistrate court. This prohibition would be mandated by the language contained in Canon 2 of the Judicial Code of Ethics which requires a judge to avoid impropriety and the appearance of impropriety in all activities. Clearly there would be a conflict in those cases when the magistrate had to determine sufficiency of service of process and the assistant's spouse had served process. Additionally, there may be perceived in the community the ability to gain an advantage in the magistrate court by using the assistant's spouse to serve process.

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For these reasons the Commission feels that the language in Canon 2 of the Judicial Code of Ethics would prohibit those activities by the magistrate assistant's husband in all magistrate court cases.

If there is any further question regarding this matter, feel free to contact the Commission.

Very truly yours,



W. Jack Stevens, Chairman

CRG/bl