



*Original*

JUDICIAL INVESTIGATION COMMISSION

Room E-400, State Capitol

Charleston 25305

November 11, 1991

Re: JIC Advisory Opinion 1991-13

Dear

In a letter to Counsel for the Judicial Investigation Commission dated August 16, 1991, you request an advisory opinion on an issue which you have encountered while serving as a family law master. In that correspondence you state that from October 19, 1982, to July, 1986, \_\_\_\_\_ was a partner with you in the law firm of \_\_\_\_\_ departed the firm in July, 1986.

You further state that on July 1, 1990, you were appointed as a family law master. During that period of time you have undertaken consideration of cases involving Mr. \_\_\_\_\_ as counsel without the need to recuse yourself if the case commenced after Mr. \_\_\_\_\_ departed your law firm in 1986.

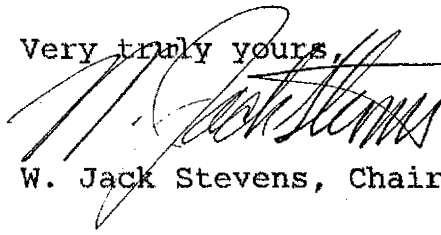
While serving as family law master you recently were presented with a domestic relations case commenced in 1986 in which \_\_\_\_\_ served as counsel. On July 1, 1991, with the jurisdiction of the same civil action, a Petition to Modify was filed in behalf of one of the litigants. \_\_\_\_\_ was not involved in the Petition to Modify. You did not notice the involvement of \_\_\_\_\_ until you had completed your work on the Recommended Order on August 9, 1991. You had never counseled or met with the litigants in the civil action while practicing as an attorney.

November 11, 1991

After learning of [redacted] involvement in the litigation you informed counsel of record by letter dated August 9, 1991, that had the information been brought to your attention on July 29, 1991, you would not have recused yourself because you were of the opinion that the "matter in controversy" addressed in Canon 3C(1)(b) of the Judicial Code of Ethics did not arise until the filing of one of the litigant's petition on July 1, 1991. You asked for an advisory opinion on whether the filing of a Petition for Modification in a domestic relations case constitutes a new "matter in controversy" or whether it is not a new "matter in controversy" requiring your recusal.

Your correspondence and request for an advisory opinion was addressed by the Judicial Investigation Commission at its most recent meeting. It is the opinion of the Commission that the Petition to Modify which was filed on July 1, 1991, was not a new "matter in controversy" addressed in Canon 3C(1)(b) of the Judicial Code of Ethics. It is further the opinion of the Commission that you could serve on such cases in which [redacted] had been involved if a full disclosure of his involvement and your relationship in the law firm were made to both sides and both sides consented to your continued participation. The procedure for such disclosure is set forth in Canon 3D of the Judicial Code of Ethics.

Very truly yours,



W. Jack Stevens, Chairman

CRG/bl