



JUDICIAL INVESTIGATION COMMISSION

Room E-400, State Capitol

Charleston 25305

August 9, 1994

Re: JIC Advisory Opinion 1994-10

Dear

In recent correspondence to the Judicial Investigation Commission, you requested an advisory opinion as to whether you should recuse yourself from cases that you initiated as a Child Advocate and would hear as a Family Law Master. You stated in that correspondence that you are the Family Law Master for Region and you had served as the Child Advocate for Region serving and Counties. You asked if a recusal were mandatory would it apply only to the initial action or would it apply to all subsequent actions brought by the Child Advocate Office that involved the same parties. You inquired if the recusal were not mandatory should the parties and their counsel be advised in writing of their right to request a recusal. And, you asked if a recusal were sought whether it would be mandatory, voluntary, or should be referred to the Circuit Judge for resolution.

After reviewing your request, the Commission has determined that the questions which you have raised are addressed by the relevant language contained in Canon 3 of the Code of Judicial Conduct. Canon 3 states in pertinent part:

CANON 3

A Judge Shall Perform the Duties of
Judicial Office Impartially and Diligently

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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 proceeding;

(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;

This language in Canon 3E of the Code of Judicial Conduct would require you to disqualify yourself in those actions in which you served as a lawyer in a matter in controversy or a lawyer with whom you previously practiced law served during such association as a lawyer concerning the matter and in cases in which you have personal knowledge of disputed evidentiary facts concerning the proceeding.

As you state in your letter, while you served as a Child Advocate you represented the interests of the State and the best interest of the child in a proceeding under the statutory authority set forth in West Virginia Code. Canon 3E (1) of the Code of Judicial Conduct requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. Because of your role as an advocate in your former employment, your impartiality would be questioned in those cases which you initiated. See e.g. State v. Flint, 301 S.E. 2d 765 (W. Va. 1983); Louk v. Haynes, 159 W. Va. 482, 222 S.E. 2d 780 (1976).

The Commission feels that recusal in these cases would be mandatory and would be required in any subsequent action brought by the Child Advocate Office that involved the same parties. It is hoped that this opinion fully addresses those issues which you have raised. If you have further questions regarding these matters, do not hesitate to contact the Commission.

Very truly yours,



Fred L. Fox, II, Chairman

FLF, II/bl
Enclosure