

JUDICIAL INVESTIGATION COMMISSION

212 Dickinson Street
Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 FAX (304) 558-0831

February 17, 1995

Re: JIC Advisory Opinion 1995-02

Dear

In a recent letter to Counsel you requested an advisory opinion from the Judicial Investigation Commission concerning your ability to sit on v. The
Aetna Casualty & Insurance Company,

In your correspondence you indicate that there had been a motion for disqualification filed by
, in which it was moved that you declare yourself disqualified to sit on the panel that decides Cannelton's petition for rehearing filed on January 9, 1995. The motion stated that you returned as special counsel to the law firm of and the firm's "representative clients" included litigants in the case. You also indicated in your correspondence that the firm represented two clients who have litigation against
in County.

Canon 2A of the Code of Judicial Conduct states:

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Based upon the information received by the Commission about your position as special counsel in the law firm, the representative clients of that firm and the issues raised in the motion filed by it is felt you could not continue to sit on the case and avoid the appearance of impropriety.

Canon 3E of the Code of Judicial Conduct states in pertinent part:

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE
IMPARTIALLY AND DILIGENTLY

E. Disqualification.

(1) A judge shall disqualify himself or herself on a proceeding in which the judge's impartiality might reasonably be questioned . . .

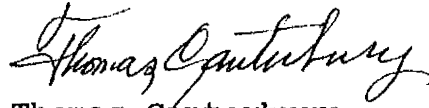
This same language appears in the federal statute governing disqualification of federal judges (28 U.S.C. §455) and has been construed by federal case law to mean that a "objective reasonable man standard" applies when applying the facts of a case to the ethical mandate. The test for an appearance of partiality is whether an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a sufficient doubt that justice would be done in the case. Pepsico, Inc., v. McMillen, 764 F.2d 458 (7th Cir., 1985); see also Home Placement Service v. Providence Journal Co., 739 F.2d 671 (1st Cir., 1984); United States v. Nelson, 718 F.2d 315 (9th Cir., 1983); United States v. DeFonzo, 707 F.2d 757 (3rd Cir., 1983).

Applying the objective reasonable man standard to the facts which you have presented to the Commission causes the Commission to feel that you would also be required to recuse yourself under the language contained in Canon 3E of the Code of Judicial Conduct.

It is hoped that this opinion fully addresses the issues which you have raised in your inquiry. If there is any further question regarding this matter do not hesitate to contact the Commission.

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Very truly yours,

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

Thomas Canterbury
Vice Chairman

TBC/bl