



## JUDICIAL INVESTIGATION COMMISSION

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November 3, 1995

Re: JIC Advisory Opinion 1995-31

Dear

Your letter to Counsel for the Judicial Investigation Commission dated September 8, 1995, in which you seek an advisory opinion was reviewed by the Commission at its recent meeting. In that correspondence you state that your son has accepted a full time paralegal position with the Attorney General's Office. You understand that your son is assigned to the Tax Division and works on Workers Compensation cases and Court of Claims cases. You asked whether you would be required under the Code of Judicial Conduct to disqualify yourself from cases where members of the Attorney General's staff appear as counsel. You noted that the Commission previously sent copies of its opinions of March 1, 1993, April 12, 1993, and August 15, 1995, for your review.

Canon 3E(1) of the Code of Judicial Conduct states:

### CANON 3

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

#### E. Disqualification.

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

The commentary to that Canon states that a judge shall disclose on the record information that the judge believes

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the parties or their lawyers might consider relevant to the question of disqualification even if the judge believes there is no real basis for disqualification.

The Supreme Court of Appeals of West Virginia in State ex rel. Brown v. Dietrick, 191 W. Va. 169, 444 S.E.2d 47 (1994) and Tennant v. Marion Health Care Foundation, Inc., et al, (No. 22643, Supreme Court of Appeals of West Virginia filed, June 15, 1995; 1995 WL 361802) addressed the language of this section of Canon 3. The Commission incorporated the holdings and reasoning set forth in these cases in issuing the August 15, 1995.

Based upon these decisions of the Supreme Court of Appeals and the advisory opinion of August 15, 1995, you would need to disclose on the record the relationship of your son to the Attorney General's Office when lawyers from that office appear in front of you. Other inquiry may then need to be made concerning whether your son was involved in the case in any fashion and, if so, to what extent or any other pertinent questions regarding the relationship of your son to the proceedings before you. Based upon that inquiry the lawyers and parties in that case could decide whether to move for your disqualification or you could decide to recuse yourself from the case.

It is hoped that this opinion fully addresses the question which you have raised. If there is any further question concerning this matter, do not hesitate to contact the Commission.

Very truly yours,



Fred L. Fox, II, Chairman

FLF, II/bl