



JUDICIAL INVESTIGATION COMMISSION

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February 19, 1996

Re: JIC Advisory Opinion 1996-01

Dear

Your letter to Counsel for the Judicial Investigation Commission was reviewed by the Commission at its recent meeting. In your letter you stated that you are one of two family law masters for Region 1. You further indicated that one of the associates in your husband's law office has been appointed guardian ad litem for a defendant appearing in a divorce action scheduled on your docket. You asked whether you are required to disqualify yourself from the proceeding since your husband's associate is acting as a guardian in the matter.

As you state in your letter Canon 3E of the Code of Judicial Conduct addresses the question of disqualification. Canon 3E(1) 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,
...

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The commentary to this section of Canon 3 also states that "a judge shall disclose on the record information that the judge believes 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 language set forth in this Canon and recent case law require you to disclose on the record the fact that your spouse's associate is serving as a guardian ad litem in this matter. The parties and their attorneys would then be able to make an informed decision on whether to file a motion to disqualify you from hearing the case. See Brown v. Dietrick, 191 W. Va. 169, 444 S.E.2d 47 (1994); Tennant v. Marian Health Case Foundation, Inc., 194 W. Va. 97, 459 S.E.2d 374 (1995).

The holding in Brown would suggest that you are not disqualified per se from hearing the case. The holding in Tennant placed the burden of disclosing relevant information concerning the question of disqualification on the judicial officer and not counsel. While you are not disqualified per se from hearing the matter you must disclose the fact that your husband's associate is serving as a guardian ad litem.

If you have any other question regarding this matter, do not hesitate to contact the Commission.

Very truly yours,


Fred L. Fox, II, Chairman

FLF, II/bl