



## JUDICIAL INVESTIGATION COMMISSION

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

March 15, 1996

Re: JIC Advisory Opinion 1996-09

Dear

Your letter to Counsel to the Judicial Investigation Commission in which you asked for an advisory opinion has been reviewed by members of the Commission. In your correspondence you stated that you serve as a Juvenile Referee for the            Judicial Circuit covering            County. You said that the            County Public Defender's Office has been appointed to serve with you as co-counsel in a            County criminal case in which you serve as one of the defense lawyers. You indicated that the Public Defender's Office handles approximately 60 to 70% of the cases appearing before you. You asked if you could hear any case in which the            County Public Defender's Office was involved.

The language as set forth in Canon 2A and Canon 3E(1) of the Code of Judicial Conduct provides guidance in addressing the inquiry which you have made. The pertinent language contained in Canon 2A 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 of 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.

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Canon 3E(1) states in relevant part:

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL  
OFFICE IMPARTIALITY 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,  
. . . .

Based on the language set forth in Canon 2A and Canon  
3E(1) of the Code of Judicial Conduct, it is the opinion of  
the Commission that you do not have a conflict while serving  
as co-counsel with the County Public Defender's  
Office. However, you do have a conflict which would require  
your disqualification from cases when you are serving as the  
Juvenile Referee for the Judicial Circuit and a member  
of the County Public Defender's Office appears before  
you representing a client. The conflict situation would  
exist as long as you served as co-counsel with the  
County Public Defender's Office in the County criminal  
case.

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

Very truly yours,

  
Fred L. Fox, II, Chairman

FLF, II/bl