



JUDICIAL INVESTIGATION COMMISSION

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June 23, 1997

Re: JIC Advisory Opinion 1997-15

Dear

Your request for an advisory opinion has been reviewed by the Judicial Investigation Commission at a recent meeting. In that correspondence you indicated that there is a new magistrate in your Circuit who was actively involved in an advocacy group prior to being elected to the bench. The magistrate was actively involved with Mothers Against Drunk Driving (MADD) and you asked whether the magistrate should preside over alcohol related offenses in light of the previous involvement. You indicated that the magistrate ceased advocacy a year prior to taking the bench and has now been sitting as a magistrate for approximately three months. The magistrate has expressed a belief that these cases could be handled fairly and impartially. You also noted that you believe the magistrate, based upon your experience as the supervising judge, could be fair and impartial; and there has been no indication calling into question the partiality of the magistrate's conduct when presiding over any type of proceeding.

Canon 3E(1) of the Code of Judicial Conduct addresses the question which you have raised. That section of the Code states in relevant 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 in a proceeding in which the judge's impartiality might reasonably be questioned . . .

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The commentary to this section of the Canon states that "under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of these specific rules in Section 3E(1) apply." The commentary goes on to state that "a judge shall disclose on the record information that the judge believes the parties or their lawyers might consider relevant to question of disqualification, even if the judge believes there is no real basis for disqualification."

Based on the magistrate's extensive involvement with this advocacy organization which you describe in your correspondence, it is the opinion of the Commission that the magistrate should be disqualified from hearing any alcohol related offense which occurred prior to the magistrate taking office. This same disqualification rule would apply to any case in which a predicate offense was being used to enhance a subsequent prosecution. For example any predicate offense which occurred before the magistrate took office would require the magistrate to be disqualified from hearing the subsequent offense which may have occurred after the magistrate took office.

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

Very truly yours,


Fred L. Fox, II, Chairman

FLF,II/bl