



JUDICIAL INVESTIGATION COMMISSION

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August 29, 1997

Re: JIC Advisory Opinion 1997-21

Dear _____

Your recent correspondence to Counsel for the Judicial Investigation Commission seeking an advisory opinion has been reviewed by members of the Commission. In your initial correspondence you state that your judicial circuit is in the process of employing two probation officers. One of the applicants who has been selected for an interview has a familial relationship to a judge in your circuit. The interviews are being conducted by the Chief Probation Officer and the other probation officers and judge as available; however, the ultimate decision will be made by you as the Chief Judge upon the recommendation of the Chief Probation Officer.

You also stated in that letter that as to the hiring of probation officers the Judicial Personnel Manual requires compliance with Canon 3C(4) of the Code of Judicial Conduct. You asked, when hiring a new probation officer, what degrees of relationship between a judge in the circuit and a potential new probation officer would constitute nepotism so as to be a violation of Canon 3C(4) of the Code of Judicial Conduct.

A second letter was received from you on August 26, 1997. In that correspondence you clarified certain facts relating to your advisory opinion request which had not been included in your communication to the Commission. You stated that the individual being considered for employment as a probation officer is the granddaughter of a judge in your circuit. You emphasized that the judge in the circuit has not and will not participate in any way in the selection process. You also stated that because the candidate is his granddaughter, you both have agreed that she will not appear before him or

handle any cases in which he presides. She will work exclusively with you. You have similar arrangements with other probation officers for different reasons. You also stated that you have interviewed seven candidates and have applied objective standards to each including numerical scores.

To address your request, a review of Canon 3C(4) of the Code of Judicial Conduct must be made. It states:

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

C. Administrative responsibilities. -

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services renders.

"Nepotism" is defined in the terminology section of the Code of Judicial Conduct:

'Nepotism' denotes favoritism shown in the treatment of a member of the judge's family or a person living in the judge's household. See Section 3C(4).

This section of the Code also defines "member of the judge's family":

'Member of the judge's family' denotes a spouse, child, grandchild, parent, grandparent, or other relative or person or persons with whom the judge maintains a close familial relationship.

Canon 3C(4) requires that a judge avoid nepotism and favoritism. "Nepotism" would involve you showing favoritism toward the granddaughter of the other judge in your circuit. In your second letter to the Commission, you have stated a number of factors which demonstrate your intention not to show favoritism toward any of the applicants for the probation officer's positions.

The judge who has the familial relationship with the applicant will not be involved in any manner in the selection process. The granddaughter of the judge, if successful in obtaining a probation officer position, will not appear before her grandfather or handle any cases in which he presides.

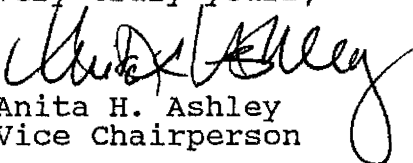
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She will work exclusively for you. This arrangement is not unique since you indicated that other probation officers have similar arrangements for different reasons. You also stated that an objective standard has been applied to the seven candidates who were interviewed including numerical scores. It is obviously your intent to select the probable officers impartially and on the basis of merit.

Based upon the efforts you are taking to avoid favoritism in the employment of the probation officers and to make any appointments on the basis of merit as demonstrated in the application of objective standards to the applicants, it is the opinion of the Commission that nepotism would not be a factor in your employment scenario. There also have been efforts taken to assure that if the other judge's granddaughter is successful in her efforts to become a probation officer she will not appear before her grandfather or be involved in any of the cases which he handles. Again it would appear to the Commission that you are striving to make the appointments objective and based on merit.

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

Very truly yours,


Anita H. Ashley
Vice Chairperson

CRG/bl