



JUDICIAL INVESTIGATION COMMISSION

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

December 11, 1997

Re: JIC Advisory Opinion 1997-29

Dear

In a recent letter to Counsel to the Judicial Investigation Commission, you stated that you are a candidate for appointment for the unexpired term of Judge of the Judicial Circuit. In your correspondence you asked for an advisory opinion from the Commission concerning whether your fiancée, , could continue to work in her position as the official court reporter for the Third Circuit if you were appointed as judge. You stated that your fiancée has been continuously employed as the official court reporter for the Circuit since April, 1991. You also said that you became engaged in February, 1997, but live in different counties and have children enrolled in different school systems. Your wedding plans remain incomplete. Your request was reviewed by the Commission at its recent meeting.

In addressing your request, the Commission reviewed language set forth in the Code of Judicial Conduct as well as statutory language in the West Virginia Code. Canon 3C(4) of the Code of Judicial Conduct states in relevant part:

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. . . .

West Virginia Code §6-10-1 states:

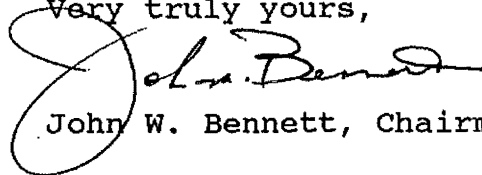
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The employment of his wife at public expense by any official or employee of the state is expressly prohibited.

The language set forth in Canon 3C(4) of the Code of Judicial Conduct would prohibit the continued employment of your fiancée in her position as the official court reporter for the Third Circuit if you were appointed as judge. Furthermore, the language set forth in West Virginia Code §6-10-1 would also foreclose any continued employment on her part if you and she were married. The Commission understands the close relationship between a circuit judge and the court reporter such as appointment, approving certain payments, and other direct work supervisory situations. This relationship would make her continued employment inappropriate if you became judge.

If there is any further question concerning the issue which you have raised, do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John W. Bennett", is written over a large, stylized circular flourish or "O" that serves as a decorative element for the signature.

John W. Bennett, Chairman

JWB/bl