



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 1997-31

Dear

Your request for an advisory opinion has been reviewed by the Judicial Investigation Commission. In your letter you stated that you became aware of a part-time family law master who represented grandparents seeking to adopt their granddaughter. You stated that you were informed by one of the parties that an attempt would be made by the daughter to regain custody of the child. You cited statutory language which states that family law masters shall hear petitions of habeas corpus wherein the issue contested is child custody.

In the specific case you discussed in your correspondence, paternity had not yet been established and custody would be contested and could ultimately be resolved through a writ of habeas corpus. The family law master involved in the case agreed to withdraw because of the contested posture of the matter but inquired about whether family law matters can participate in adoption cases. You asked the Commission to consider this question.

A review of Canon 6C of the Code of Judicial Conduct reveals that a part-time family law master is a continuing part-time judge within the definition set forth in the Code. Canon 6C(2) states that a continuing part-time judge "may practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, but shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto, or in any matter involving the same subject-matter jurisdiction."

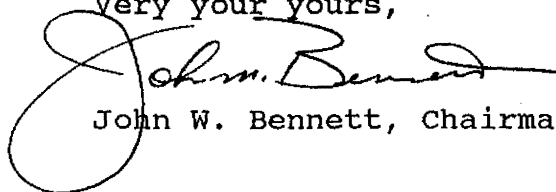
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The commentary to that Canon states that "a part-time family law master shall not accept any domestic relations matter or serve as an attorney in any proceeding relating to a case in which he or she has served as a family law master . . . "

Your letter stated that while adoptions are still heard and decided by circuit judges, there may be some contested cases which could be assigned to family law masters. That type case would appear to be an exception. Based upon the fact that adoptions are heard and decided by circuit judges and only some contested cases could be assigned to family law masters, it is the opinion of the Commission that family law masters are not per se prohibited from participating in all adoption cases. A part-time family law master could participate in an adoption case, but must investigate whether conflicts of interest either are present or have the potential of arising prior to undertaking representation. State ex rel. Bailey v. Facemire, 413 S.E.2d 183 (W. Va. 1991). A family law master "should not represent private clients when such representation would likely cause them to recuse themselves later as public officials."

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

Very your yours,

A handwritten signature in dark ink, appearing to read "John W. Bennett", is written over a large, loopy circular flourish.

John W. Bennett, Chairman

JWB/bl