



JUDICIAL INVESTIGATION COMMISSION

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December 11, 1997

Dear Mr. :

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission at its recent meeting. In your letter you asked for an advisory opinion on the ethical propriety of magistrate participating in a pretrial diversion program in which magistrates refer college students, with their consent, who are charged with certain alcohol and other offenses to a college-sponsored student assistance program. You indicated that upon receiving notice of satisfactory completion of the program by a student defendant, the magistrate court would inform the prosecutor who would move to dismiss the case. You stated that there is no legal authority for magistrates to conduct such a diversion program and no such program is available to defendants who are not college students.

The inquiry which you have made can be addressed by language contained in Canon 2 and Canon 3B(2) of the Code of Judicial Conduct. Canon 2 states in relevant part:

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all the judge 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.

The Honorable

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Canon 3 states in relevant part:

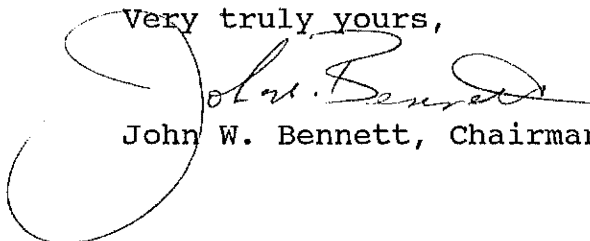
Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

B. Adjudicative responsibilities. - (2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

The language set forth in these Canons would prohibit magistrates from participating in the program which you describe in your letter. There is no legal authority for magistrates to participate in such a program. Furthermore, the participation in such a program would have magistrates bestowing the benefits of a diversion program on some litigants in a certain class which are not available for other litigants in the same class. Any such program would reside more properly in the office of prosecuting attorney.

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

Very truly yours,



John W. Bennett, Chairman

JWB/bl