



## JUDICIAL INVESTIGATION COMMISSION

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August 25, 1998

Re: JIC Advisory Opinion 1998-11

Dear

Your letter to the Chairman of the Judicial Investigation Commission was reviewed by the Commission at its recent meeting. In your letter you asked for an advisory opinion regarding whether a judge may sentence a criminal defendant whom the judge represented in another criminal matter when the judge practiced law.

The Commission looked to the relevant language in Canon 3E(1) to address the question which you have raised. That section of Canon 3 says 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, including but not limited to instances where:

- (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it; . . .

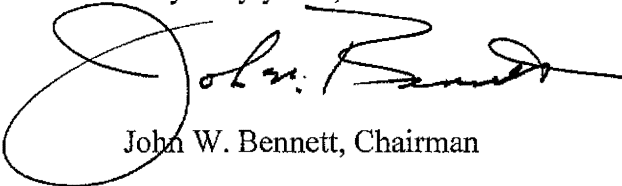
The other provisions of Canon 3E set forth specific instances where a judicial officer may have a per se requirement to disqualify in a case. The above cited provisions address a judge's question regarding disqualifications with no per se requirement exists.

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In the situation which you have described there is no per se requirement that you disqualify yourself. The above cited sections of Canon 3 provided that if a judge has a personal bias or prejudice concerning a party or party's lawyer or personal knowledge of dispute of entry facts concerning a proceeding disqualification may be appropriate. The Commission can find no reason based on the information which you have provided why you may not sentence the defendant whom you represented in another matter while you were practicing law. You should, of course, disclose the former representation on the record and afford the parties and their counsel an opportunity to make any motions they feel are appropriate. If there is any further question regarding this matter, please 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.

John W. Bennett, Chairman

JWB:nb