



JUDICIAL INVESTIGATION COMMISSION

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November 16, 1998

Re: JIC Advisory Opinion 1998-16

Dear

In your recent letter to Counsel to the Judicial Investigation Commission you stated that you had been elected to fill the unexpired term of _____ as Judge of the _____ Judicial Circuit. You stated that you expected to be sworn in as circuit judge on or about _____. You indicated that since on or about 1994 you had been associated with _____, as partners in the practice of law doing business as _____ and _____ a partnership. On or about February 1993, your partner _____ accepted a position as a part-time assistant prosecuting attorney of _____ County. He has continued as a part-time prosecuting attorney from that time until the present time. When he became an assistant prosecuting attorney, you stopped accepting or taking criminal and juvenile cases. You continued to act as Mental Hygiene Commissioner of _____ County, a position which you have held since 1977, under an advisory opinion issued by the Commission dated June 16, 1993.

Since the time _____ became a part-time assistant prosecuting attorney, you and he have maintained a "Chinese Wall" or "Screen" between you and him. _____ has not discussed with you and you have not discussed with him the cases that he was handling in the prosecuting attorney's office or the work of the prosecuting attorney's office. You stated that _____ has almost exclusively handled juvenile cases, cases of child abuse and neglect, and requests for formal legal opinions from your county commission. He has not handled criminal cases in the prosecuting attorney's office.

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_____ has physically utilized the prosecuting attorney's office and secretaries for matters involving his work as an assistant prosecuting attorney. He has office space and secretarial assistance at that office and you have done your best to separate his work as an assistant prosecuting attorney from your work as a law firm. _____ is paid and has been paid for his services for prosecuting attorney by the County Commission of _____ County. Those payments have gone directly to _____ and have not passed through your partnership account.

You stated that in view of the fact that you and _____ have been law partners it is your intention to sua sponte disclose the former relationship in any cases that may come before you in which _____ is or was involved as an assistant prosecuting attorney. You stated that you can fairly and impartially act as circuit judge in cases in which he has participated or would be participating as an assistant prosecuting attorney. However you would like an advisory opinion regarding the propriety of acting as circuit judge in regard to (1) juvenile and child and abuse cases in which _____ has or will appear as assistant prosecuting attorney and (2) any matter involving the prosecuting attorney's office that involves matters during the time that _____ was assistant prosecuting attorney but which he was not personally involved such as criminal cases that were indicted while he was an assistant prosecuting attorney.

The Commission has reviewed Canon 3E of the Code of Judicial Conduct to address the questions which you have raised. Canon 3E states 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; . . .

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The commentary following Canon 3E (1) states in relevant part:

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

The language set forth in these sections of Canon 3E aid in answering the inquiry which you have made.

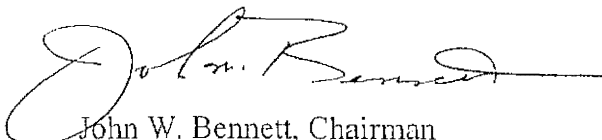
The Commission feels that it would be inappropriate for you to act as circuit judge with regard to juvenile and child abuse cases in which _____ has or will appear as assistant prosecuting attorney. This disqualification would continue for any case begun while your partnership with _____ continued.

The Commission feels that you would not be disqualified from matters involving the prosecuting attorney's office that involves matters during the time that _____ was assistant prosecuting attorney but in which he was not personally involved. The efforts which you and _____ have made to maintain a separation from your partnership and his activities as assistant prosecuting attorney plus the fact that he was not personally involved in such cases would relieve you of the necessity of disqualifying yourself from those matters.

As you stated in your letter, you should disclose your former relationship with _____ in all cases which come before you in which _____ is or was involved as an assistant prosecuting attorney or those other cases involving the prosecuting attorney's office. Again, this disclosure requirement would remain for any case opened by the prosecuting attorney's office while you and _____ had your partnership arrangement.

If you have any further questions regarding these matters do not hesitate to contact the Commission.

Very truly yours,



John W. Bennett, Chairman