



## JUDICIAL INVESTIGATION COMMISSION

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

March 16, 1999

Re: JIC Advisory Opinion 1999-04

Dear

At its recent meeting the Judicial Investigation Commission reviewed your request for an advisory opinion which was received in this office on February 22, 1999. In your letter you stated that you were recently appointed as a Magistrate in                    County. You said that you had joined the                    County Public Defender Office in August 1996 and as an attorney had done extensive criminal defense work in magistrate court. The Public Defender Office handles magistrate cases by assigning one attorney to each magistrate (there are six) and that attorney handles all misdemeanor cases assigned to that court. You stated that you were the assigned attorney by name on all cases assigned to the magistrate you worked with. Other attorneys in the office frequently "pitch in" to help each other with their assigned cases. On any given day in magistrate court there can be two or three attorneys helping the main attorney assigned to that court.

In the two and one-half years you were a Public Defender you were the assigned attorney on some 900 cases and communicated with several dozen other clients while helping other attorneys with their assigned case load. You stated that other attorneys handled cases that were assigned to you by name and have done the actual client contact and handled the case for you on the actual day in magistrate court. You stated that because of the scheduling delays or changes you had several clients that you never met face to face but were handled on court day by another attorney from the office. You asked when it would be necessary for you to recuse yourself from cases involving the Public Defender's Office.

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To answer the inquiry which you have made the Commission has reviewed the relevant sections of Canon 3E of the Code of Judicial Conduct. This Canon states in relevant part:

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

E. Disqualification.

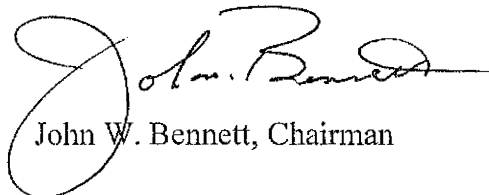
(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

- (a) a 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; . . .

After reviewing the information which you have provided and the relevant sections of Canon 3E it is the opinion of the Commission that you must recuse yourself in all cases in which you served as an attorney. You should disclose your prior employment as a Public Defender in all other cases involving that office and afford the parties or their attorneys an opportunity to file any appropriate motion.

If you have any further question regarding this matter do not hesitate to contact this office.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John W. Bennett". The signature is fluid and cursive, with a large initial "J" and "W".

John W. Bennett, Chairman

JWB:nb