



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 • FAX (304) 558-0831

March 16, 1999

Re: JIC Advisory Opinion 1999-05

Dear

Your request for an advisory opinion was reviewed by the Commission at its recent meeting. In that request you stated that you and your wife were in the process of adopting a child. Part of the process requires you to name an attorney who will represent you in the adoption. You and your wife would like to employ a local attorney who appears about two or three times a month before you in a wide range of cases, including civil, criminal and child and abuse and neglect cases. You also stated that you anticipated adopting a foreign child and it could be a long wait before the child comes to this country and you actually start legal proceedings. You state that you must name an attorney now, but it may be six to nine months or even up to a year before the attorney you identify actually performs any work for you. You anticipate the adoption being a relative simple procedure from a legal standpoint. You do not believe that, in terms of pending cases, in which the attorney is involved you would have an automatic disqualification requirement. You do state that whether required to or not, after you name the attorney to represent you, you would disclose this fact to all opposing counsel in all pending cases in which the attorney is involved. You asked for guidance in what procedure you should follow if a concern is raised about the attorney representing you and appearing before you at the same time. You asked whether it made any difference that currently you are just naming the attorney, rather than actually employing the attorney and paying a retainer fee. You also asked whether there was a difference if you had a simple uncontested adoption as opposed to a contested adoption or protracted legal proceeding.

To address your questions the Commission has reviewed Canon 2A and Canon 3E(1) of the Code of Judicial Conduct. Those Canons state in relevant part:

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

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

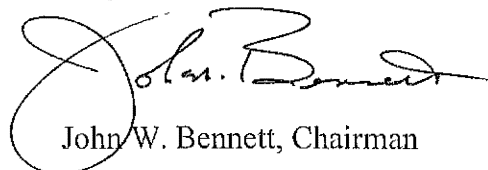
E. Disqualification. - (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, . . .

The commentary under Canon 3E(1) states that under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply.

After reviewing the information which you have provided the Commission and the relevant language in these Canons, it is the opinion of the Commission that after you have named the attorney you must disclose this relationship in all cases in which the attorney appears. Further, it is the opinion of the Commission that you should recuse yourself in all cases when asked to do so after the relationship has been disclosed. These requirements would exist during the time you and your wife have the relationship with the attorney.

It is hoped that this opinion fully addresses those concerns which you have raised. If you have any further questions regarding this matter do not hesitate to contact the Commission.

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 "B".

John W. Bennett, Chairman

JWB:nb