



JUDICIAL INVESTIGATION COMMISSION

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April 6, 1999

Re: JIC Advisory Opinion 1999-07

Dear

In a recent letter to Counsel to the Judicial Investigation Commission you asked for an advisory opinion. In your correspondence you stated that you serve part-time as the Juvenile Referee in Kanawha County. You have been asked by the County Public Defender Office to work for them temporarily on an hourly contract basis. They recently lost two of their four attorneys. Included in the work may be the representation of juveniles. You stated that you have pursuant to previous decisions represented adult criminal defendants in areas some distance way for County where you could not reasonably contemplate conflict arising with the offenses themselves. You asked for an opinion from the Commission regarding any conflicts you may have been doing the contract work with the Public Defender's Office and representing juveniles.

The Commission has reviewed your request and looked at the sections of Canon 6 which provide guidance in addressing your inquiry. Canon 6 and its commentary state in relevant part:

Canon 6. Application of the Code of Judicial Conduct.

C. Continuing part-time judge. A continuing part-time judge:

- (1) is not required to comply
- (a) except while serving as a judge, with Section 3B(9); and
- (b) at any time with Sections 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(3), and 5D

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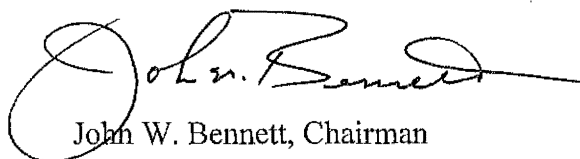
(2) may practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, but shall not act as a lawyer in a proceeding in which the judge has served as a judge in any other proceeding related thereto, or in any matter involving the same subject-matter jurisdiction.

Commentary. - [n]or shall a Juvenile Referee accept any juvenile matters or serve as an attorney in any proceeding related to a case in which he or she has served as a Juvenile Referee.

The Commission feels that the Canon attempts to exempt continuing part-time judges such as Juvenile Referees from many of the sections of the Code of Judicial Conduct so that the individuals may practice law or engage in other gainful endeavors when not serving as a judge. The Commission feels that the Commentary should be construed to mean that a Juvenile Referee may not accept any juvenile matters which are related to a case in which he or she has served as a Juvenile Referee. The Commission also notes that your work with the Public Defender's Office will be in an area of the state distant from County. It is the opinion of the Commission that you may from time to time represent juveniles if that is included in your work contract with the Public Defender's Office and if those cases are not related to any proceeding or case in which you served as a Juvenile Referee.

It is hoped that this opinion addresses the inquiry which you have made. If you have any further question regarding this matter do not hesitate the Commission.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John W. Bennett", with a large, stylized initial "J".

John W. Bennett, Chairman

JWB:nb