



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 • FAX (304) 558-0831
December 28, 1999

Re: JIC Advisory Opinion 1999-18

Dear

In a recent letter to Counsel you asked the Commission to issue an advisory opinion. In that correspondence you stated that you and Judge have hired as your law clerk effective August 1, 2000. You asked whether any ethical problem would arise if ; wife who is an attorney practice before you and You attached to your request a letter from and asked for a formal opinion from the Commission regarding four issues raised in that correspondence.

The Commission will address the four questions raised in the letter in the order they were listed. You asked whether a circuit judge should remove himself from a case where his law clerk's lawyer spouse appears before the judge. If so, does the same rule apply to a situation where only the law clerk's lawyer spouse's firm appears before the court. In all cases the judge has an affirmative duty to disclose the relationship between the clerk and the spouse when the spouse appears or the spouse's firm appears before the court. The judge is not required to recuse himself from the case but the disclosure must be made and in those cases in which the clerk's spouse has any involvement a "Chinese Wall" should be built around the case and the clerk should not participate in any manner with the handling of that case.

You asked whether a circuit judge should inform the parties and counsel that the law clerk's lawyer spouse or spouse's firm is appearing before the court. The Commission feels that it is incumbent upon the circuit judge to disclose this information.

You asked whether a law clerk should remove himself from a case where the lawyer spouse appears before the judge for whom the law clerk works. If so, does the same rule apply to a situation only where the lawyer spouse's firm appears before the law clerk's judge. As was stated above it is the feeling of the Commission that in all cases involving the clerk's spouse coming before the circuit judge the clerk should not participate in any manner in that case.

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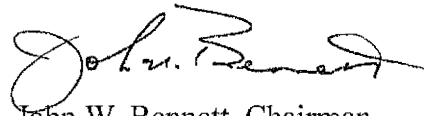
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In those cases involving the lawyer spouse's firm any case in which the lawyer spouse participated would require the law clerk to not be involved in any manner in that case.

You also asked whether a law clerk has a duty to inform the judge for whom he works that the law clerk's spouse or lawyer spouse's firm has a case pending before the judge. The Commission feels that the law clerk has an affirmative duty to inform the judge in all such cases so that the procedure here, and set out above, can be followed.

If there is any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John W. Bennett".

John W. Bennett, Chairman

JWB:nb