



JUDICIAL INVESTIGATION COMMISSION

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January 28, 2000

JIC Advisory Opinion 2000-04

Dear Judge :

You recently asked the Judicial Investigation Commission for an advisory opinion. In your letter to the Commission you stated that you have pending before you a civil action which is being defended by a partner in the office of the law firm of . You stated that you have disclosed to counsel for both parties that your brother is a partner in the office of the same law firm. Neither counsel has objected to you serving as judge in the case nor has either counsel requested your voluntary recusal. You further stated that in reviewing the file you had a concern about whether or not your brother being a partner in the law firm of is a per se disqualification irrespective of the fact that the case is being defended by the office of the firm, not the office. You stated that your brother has never appeared in any proceeding, and no one has objected to your trying the matter after you disclosed the relationship.

To address the question that you have presented the Commission review Canon 3E(1) of the Code of Judicial Conduct. Canon 3 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 . . .

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The commentary following this section of Canon 3 states:

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. See Tenant v. Marion Health Care Foundation, Inc. et al, 194 W.Va. 97, 459 S.E.2d 394 (1995).

Based upon the fact that you have disclosed on the record the relationship your brother has with the firm which is defending the action, the fact that your brother has no involvement in the case, and the lack of any opposition to you sitting on the civil action, it is the Commission's opinion that you may hear this matter. In cases involving your brother's law firm you should always disclose your relationship on the record and ascertain that your brother has no involvement in the case you are hearing. See also State ex rel. Brown v. Detrick, 191 W.Va. 169, 444 S.E.2d 47 (1994); JIC Ad. Op. 8/15/95.

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", written in dark ink.

John W. Bennett, Chairman

JWB:nb