



JUDICIAL INVESTIGATION COMMISSION

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June 30, 2000

JIC Advisory Opinion 2000-32

Dear Judge :

Your request for an advisory opinion was reviewed by the Judicial Investigation Commission at its recent meeting. In that request you enclosed a copy of a report sent to you by the Clerk of the Supreme Court. As a judge you are required to complete the report as required by Canon 4H(2) of the Code of Judicial Conduct. You stated that you were uncertain how to complete the report.

On of the report it directs you to list the name of any firm, corporation, or partnership in which you have any interest. You stated that prior to becoming a judge you had an IRA account and money in the Public Employee's Retirement System. You also had investments in several tax deferred retirement plans. Since becoming a judge you have participated in the State of West Virginia 457 Deferred Compensation Plan. The bulk of these investments are in various mutual funds. You stated that there are probably many, many companies in which you may have an interest through stock purchases by the mutual funds. While you own the investments, you receive no current income from them. All of the income is payable when you retire. You asked if you needed to list all of the companies in paragraph one or can the reporting requirements of paragraph one be interpreted to require the listing of any fund, corporation or partnership in which the judicial officer has more than a de minimis interest.

You stated that the second paragraph of the report directed you to list any sources other than the ones listed in paragraph one from which you receive compensation in excess of \$500. You asked what was meant by "compensation." You inquired whether compensation is money received in exchange for you rendering services or whether compensation was a broader term

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including passive income that may be received by you from investments such as money deposited in a CD at a bank. You asked whether passive income, if deferred, until after retirement must be listed in paragraph two.

Canon 4H(2) of the Code of Judicial Conduct states:

Canon 4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

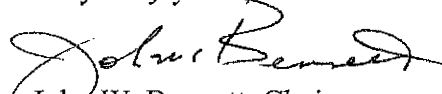
H. Compensation, reimbursement, and reporting.

(2) Public reports. - A judge shall report the name of a firm, corporation, or partnership in which the judge has an interest and relationship thereto. In addition, should the judge receive compensation during the calendar year exceeding \$500 from sources other than those listed in the preceding sentence, the judge shall report the name of the payor and the reason for the compensation. Compensation or income of a judge's spouse contributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The report must be made annually by July 1 for the preceding calendar year, and must be filed as a public document in the office of the Clerk of the Supreme Court of Appeals or other office designated by rule of the Supreme Court of Appeals.

The Commission in reviewing your request for an advisory opinion reviewed this section of Canon 4 as well as the copy of the report which you submitted. After reviewing the Canon and the report it is the opinion of the Commission that the first line should be answered by stating any firm, corporation, or partnership in which you have any interest. The Commission feels that holdings in a mutual fund are impossible to know from day to day. Those funds should be reported only by the name of the fund. Likewise, any retirement plans which may be invested in entities which contain specific investments but which may change from a day to day should only be listed as the particular plan and/or fund.

The Commission, after reviewing your inquiry about the meaning of "compensation," feels that compensation should be that income in excess of \$500 which would be reportable to the Internal Revenue Service on a tax return. It is hoped that this opinion addresses the inquiry which you have made. If there is any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,


John W. Bennett, Chairman

JWB:nb