



JUDICIAL INVESTIGATION COMMISSION

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October 24, 2000

JIC Advisory Opinion 2000-40

Dear Family Law Master :

In a letter to the Commission you requested an advisory opinion on whether you would be disqualified under Canon 3E of the Code of Judicial Conduct in cases which involve the West Virginia Department of Health and Human Resources, if your wife were to become employed by that agency or the Child Support Enforcement Division. You stated that she had applied for employment in a clerical position. You asked whether you have an affirmative duty to advise litigants of your wife's employment if either the Department or Health and Human Resources or the Child Support Enforcement Division would be involved in the litigation.

Canon 3E of the Code of Judicial Conduct 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. . . .

The Commentary to this Section of Canon 3 states that "a judge shall 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."

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Based upon the employment scenario which you have set forth in your letter and after reviewing the relevant Sections of Canon 3E, it is the opinion of the Commission that if your wife becomes employed in the Region which you serve you should disclose that information. You would not need to disqualification yourself from the case unless your wife were involved directly in working on the case.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald H. Cookman", with a long horizontal flourish extending to the right.

Donald H. Cookman, Chairman
Judicial Investigation Commission

DHC:nb