



JUDICIAL INVESTIGATION COMMISSION

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January 16, 2001

JIC Advisory Opinion 2001-01

Dear Judge :

In a recent letter to the Commission an advisory opinion was requested asking whether a proposed buy out from your former law firm would in any manner contravene Code of Judicial Conduct. You set forth the general proposal as follows:

will sell his interest in the partnership to the remaining partners for the greater of:

a. A 20% interest in all fees generated from the firm's representation of the plaintiffs in a civil action pending in the Circuit Court of _____, West Virginia, styled _____, the total fee paid to _____ not to exceed \$_____.

or

b. \$ _____

The remaining partners will pay _____ a lump sum of \$ _____ by no later than January 15, 2001, and \$ _____ per month, beginning in February 1, 2001, which monthly payments will continue until the monthly payments total \$ _____, or _____ has received \$ _____ in fees from the railroad case. All payments made under this paragraph will be treated as advancements of share of that fee.

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It was further stated in the correspondence that it is likely that the damage issue in the civil case will be settled intermittently, either by trial or settlement, over an extended period of time, perhaps several years. Assuming that, you would continue to receive intermittent payments from your former law partners for an extended period of time after you assume the Circuit Judge position in January 2001. You stated that you would need to recuse yourself from any proceeding in which your former law partners were involved, throughout the pay out period, as well as to recuse yourself from any case so long as the civil action case remained pending.

After reviewing your inquiry and the relevant Sections of Canon 4D it is the opinion of the Commission that the agreement which you have proposed would be permitted. You correctly state that you would not be able to preside over any proceeding in which your former partners were involved throughout the payout period, nor could you preside over any case so long as the civil action remained pending. You have made an effort to expeditiously resolve the purchase of your interest of the partnership by your former partners and this has been set forth in a written agreement.

If you have any further question regarding this matter do not hesitate the Commission.

Very truly yours,

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

Donald H. Cookman, Chairman
Judicial Investigation Commission

DHC:nb