

JUDICIAL INVESTIGATION COMMISSION

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February 16, 2001

JIC Advisory Opinion 2001-03

Dear Ms. :

Your recent letter requesting an advisory opinion was reviewed by the Judicial Investigation Commission at its meeting. In your correspondence you stated that during the 2000 Legislative Session, W.Va. Code § 48-2A-3a was changed and as of April 1, 2001, "magistrate court jurisdiction shall be limited, and therefore, full hearings wherein a protective order is sought shall be heard before a circuit judge or a family law master." You wrote asking for an opinion in the matter raised by the impending assumption of domestic violence jurisdiction. You stated that a few of the state's family law masters are married to prosecutors or assistant prosecutors who practice within the same county. You asked if there was a conflict of interest when a family law master heard a domestic violence petition which may be prosecuted by the prosecutor/spouse. You also asked if there were a conflict of interest if a prosecutor or assistant prosecutor prosecuted a respondent for alleged contempt of an order previously entered by the prosecutor's office. To address the second inquiry you were advised to contact the Office of Lawyer Disciplinary Counsel since the matters raised concerned ethical issues facing attorneys and would be more properly handled by that office.

To address the first inquiry which you have made, the Commission has reviewed Canon 3E of the Code of Judicial Conduct. Canon 3E states in relevant part as follows:

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, including but not limited to instances where:

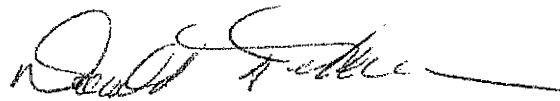
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- (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
- (ii) is acting as a lawyer in the proceeding.

In those cases where the prosecutor/spouse is appearing there is a per se disqualification requirement under the terms of Canon 3E(1)(d)(ii). In those cases where the prosecutor/spouse had no direct involvement in the case, a finding under the language contained in State ex rel. Brown v. Detrick, 191 W.Va. 169, 444 S.E.2d 47, (1994) must be made as to whether a recusal is required. Under the holding of the court in this case a hearing may be necessary to determine the extent of any involvement of the prosecutor/spouse with the case and what efforts were made to insulate that individual from the case, file, witnesses etc., before a determination of recusal could be made.

It is hoped that this opinion fully addresses the questions 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 dark ink, appearing to read "Donald H. Cookman", with a long horizontal flourish extending to the right.

Donald H. Cookman, Chairperson

DHC:nb