



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 • FAX (304) 558-0831

March 15, 2001

JIC Advisory Opinion 2001-07

Dear Mental Hygiene Commissioner :

Your recent letter to the Judicial Investigation Commission asking for an advisory opinion has been reviewed. In your correspondence you stated that you are a mental hygiene commissioner for _____ and _____ Counties. You stated that it had come to your attention that at least one of the circuit judges in the _____ Judicial Circuit believed that mental hygiene commissioners may not be appointed or accept court appointments. Prior to and since your appointment a few years ago you have routinely accepted court appointments, particularly in abuse and neglect and juvenile matters. You state that the majority of local mental hygiene commissioners (past and present) have accepted court appointments. You asked whether mental hygiene commissioners may receive and/or accept court appointments.

To address the issue which you have raised, the Commission reviewed Canon 6 of the Code of Judicial Conduct which deals with the application of the Code of Judicial Conduct. Canon 6C defines continuing part-time judge. That section of Canon 6C states in relevant part:

Canon 6. Application of the Code of Judicial Conduct.

C. Continuing part-time judge. - A continuing part-time judge:

(1) is not required to comply

- (a) except while serving as a judge, with section 3B(9); and
- (b) at anytime with sections 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2), and 5D.

March 15, 2001

Page Two

(2) may practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, but shall not act as a lawyer in a proceeding in which the judge has served as a judge in any other proceeding related thereto, or in any matter involving the same subject-matter jurisdiction.

The commentary to this Canon states in relevant part that "a part-time Family Law Master shall not accept any domestic relations matter or serve as an attorney in any proceeding related to a case in which he or she has served as a Family Law Master, nor shall a Mental Hygiene Commissioner accept any mental hygiene matters or serve as an attorney in any proceeding related to a case in which he or she has served as a Mental Hygiene Commissioner. . . ." This section of Canon 6 states explicitly that you are not required to comply with Canon 4G which prohibits judges from the practice of law and states that you may practice in the court on which the judge serves or in any court subject to appellate jurisdiction of the court on which the judge serves.

The only restriction placed on the kinds of cases you may handle is the prohibition that you not handle mental hygiene matters or serve as an attorney in a proceeding related to a case in which you have served as a mental hygiene commissioner. Based in the clear language contained in this Canon and the commentary following it, it is the opinion of the Commission that you may accept court appointed cases so long as you do so within the perimeters of Canon 6C of the Code of Judicial Conduct.

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, sweeping horizontal line extending to the right.

Donald H. Cookman, Chairperson
Judicial Investigation Commission

DHC:nb