



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
Charleston, West Virginia 25326-1629
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November 16, 2001

Re: JIC Advisory Opinion 2001-20

Dear

In a recent letter to the Commission you asked for an advisory opinion. You stated that your wife who is a part-time graduate student in counseling at West Virginia University will be required to commence a "practicum" (two full work days per week, for sixteen weeks) in or about September 2002, and to follow with an "internship" (four full work days per week, again for sixteen weeks) starting in or around January 2003. You stated that she has been provided a list of possible agencies for these experiences and many of them are agencies closely related to your office in various ways. You stated that in light of the possible close connection between your work and her "practicum" and/or "internship" you were concerned about public perception and the appearance of impropriety. You asked for an advisory opinion concerning this matter.

The Commission reviewed Canon 3 of the Code of Judicial Conduct to address the question which you have raised. That Canon says 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 . . .

That section of Canon 3 goes on to state certain times when a judge is disqualified per se from hearing a case and other times when a judge must only make a disclosure which may result in a motion for the judge's disqualification but which is not a per se disqualification.

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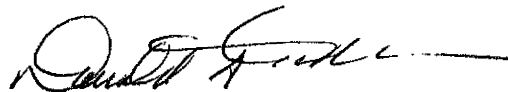
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Our Court had addressed disqualification and the distinction between per se disqualification and those cases in which a disclosure is required but which may not result in disqualification. See Brown v. Detrick, 191 W.Va. 169, 444 S.E.2d 47 (1994); Tennant v. Marion County Health Care Foundation, Inc., 194 W.Va. 97, 459 S.E.2d 374 (1995). In the Brown decision the Court stated that if a spouse was not directly involved in a case, after a disclosure was made, a hearing could be held to determine whether there were any grounds for recusing the judicial officer.

Based upon the language contained in Canon 3E and the Court's holdings in Brown and Tennant, it is the opinion of the Commission that you must disclose your wife's employment if the employing agency is involved in any case before your court. You would be required to recuse yourself in those cases in which your wife was involved in any fashion.

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, Chairperson
Judicial Investigation Commission

DHC:nb