



## JUDICIAL INVESTIGATION COMMISSION

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

May 7, 2002

Re: JIC Advisory Opinion 2002-14

Dear

In a recent letter to Counsel to the Judicial Investigation Commission you asked for an advisory opinion regarding whether a senior status judge could serve as a hearing examiner for the Department of You stated that the hearing examiner's ruling may  
be appealed to the director of the division and eventually to a court of record.

To address the inquiry which you have made, the Commission has reviewed relevant parts of Canon 6 and Canon 4 of the Code of Judicial Conduct. Canon 6 states in relevant part:

Canon 6. Application of the Code of Judicial Conduct.

B. Retired judges. - (1) A retired judge admitted to senior status but who does not engage in the practice of law is not required to comply with section 4E.

(2) A retired judge admitted to senior status but who engages in limited law practice is not required to comply with sections 4E and 4G.

(3) A retired judge not admitted to senior status but who is recalled for specific cases or specific periods of service shall be deemed a pro tempore part-time judge subject to section 6E.

(4) A retired judge, whether or not admitted to senior status and whether or not engaging in law practice, may be employed as a mediator or an arbitrator notwithstanding the provisions of section 4F.

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Canon 4 states in relevant part:

Canon 4. A judge shall conduct the judge's extrajudicial activities as to minimize the risk of conflict with judicial obligations.


F. Service as arbitrator or mediator. - A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

The Commission has noted in these two Canons that senior status judges are exempted from certain provisions of the Code of Judicial Conduct. Among the provisions from which they are exempted are certain fiduciary activities (4E), the practice of law (4G) and service as an arbitrator or mediator (4F). However, Canon 4F also says that judges shall not perform judicial functions in a private capacity unless expressly authorized by law. The position of hearing examiner is one which requires you to serve in at least a quasi judicial capacity and perform judicial functions. A ruling of the hearing examiner may be appealed to the director of the division and eventually appealed to a court of record.

Canon 6 does not appear to contain any exemption from this prohibition contained in Canon 4F. It is therefore the opinion of the Commission that you should not serve as a hearing examiner for the Department of Environmental Protection since the function of that position would be prohibited for a judge under the provisions of Canon 4F.

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 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