



JUDICIAL INVESTIGATION COMMISSION

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August 5, 2002

Re: JIC Advisory Opinion 2002-19

Dear _____

The Judicial Investigation Commission has recently received a letter from your law clerk in which an advisory opinion is sought regarding seeking subsequent employment while still serving as a law clerk. Since Rule 2.13 of the Rules of Judicial Disciplinary Procedure states that a judge may by written request seek an advisory opinion, the opinion will attempt to answer the questions raised by the law clerk but will be directed to you.

In the request an advisory opinion was sought as to ethical consequences and recommended course of action in each of two situations. The first situation was when a law clerk applies for a position with a private entity, (i.e., a private law firm). Should the law clerk and the supervising judge handle cases involving such private law firm: 1) after an application/resume has been submitted only; 2) after an interview has been granted and/or had; and 3) after an offer of employment has been extended and the law clerk has accepted.

The second situation involves a judicial law clerk applying for a position with a public entity, (i.e., the office of prosecuting attorney). Should the law clerk and the supervising judge handle cases involving, for example, the Office of Prosecuting Attorney (keeping in mind that a great deal of case load in the circuit comes from criminal cases involving that office) when: 1) an application/resume has been submitted only; 2) an interview has been granted and/or had; 3) an offer of employment has been extended and the law clerk has accepted.

In analyzing the information it received and in addressing the questions which have been raised, the Commission has reviewed the Code of Judicial Conduct as well as other literature relevant to law clerks and their relationship to their judges, and a clerk's application for

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subsequent employment after serving as a law clerk. While there is a considerable amount of literature covering the general topic, there is no clear definition of parameters within which a judge and the judge's law clerk must perform while the law clerk is seeking employment. Different approaches have been followed in various jurisdictions. See generally, "Protecting the Appearance of Judicial Impartiality in the Face of Law Clerk Employment Negotiations," 62 Wash. L. Rev. 813; "The Spotless Reputation and Federal Law Clerk Employment Negotiation," 25 U.Mem. L. Rev. 127. It is evident from the Commission's review that each judge has discretion in this area and should carefully monitor the employment process as it proceeds.

The Code of Judicial Conduct, among other things, states in Canon 3B(2) that a judge shall be faithful to the law and maintain professional competence in it. A judge should not be swayed by partisan interest, public clamor or fear of criticism. Canon 3C(2) requires that a judge shall require court staff officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and refrain from manifesting bias or prejudice in the performance of their official duties. Canon 3E requires that a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality may reasonably be questioned. The ultimate goal is to prevent any appearance of partiality when a party to whom the clerk has applied for employment appears before the court. The guidelines set down by the Code of Judicial Conduct coupled with the special relationship which exists between a judge and the judge's law clerk requires certain procedures be followed when the law clerk seeks subsequent employment while still serving as a law clerk.

In arriving at some guidelines in this area, the Commission has attempted to balance the ethical requirements set forth in the Code of Judicial Conduct with the Court's need to continue to attract talented law graduates to serve in clerkship positions. Drafting guidelines that are too onerous would discourage gifted graduates from applying for clerk positions; failing to set some guidelines would fail the mandates set forth in the Code of Judicial Conduct.

The Commission feels that the clerk should keep the judge informed at all stages of the employment search. When resumes or other employment applications are mailed to various employers the clerk should make the judge aware of that action. However, no recusal would be required on the part of the judge, nor would the law clerk be required to refrain from participating in working on cases at that point. Most clerks will probably apply to several entities for future employment.

After the clerk has interviewed with a perspective employer, or is awaiting a job offer, or has received a job offer, the clerk should be screened from any participation in cases involving that perspective employer. The judge would not be required to recuse himself/herself from the case if the clerk is screened from any participation in the matters before the court involving that party.

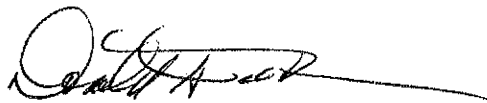
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While there is a difference between some federal courts and some state advisory bodies regarding guidelines where employment is sought from private entities as opposed to public entities, it is the opinion of the Commission that there should be no distinction. In order to keep the guidelines clear, it is the opinion of the Commission that after a clerk interviews with a perspective employer, be it private or public, that clerk should be screened from participation in any cases involving that perspective employer. As long as the clerk is screened from any participation in cases involving a perspective employer, the judge is under no obligation to recuse himself/herself from that case.

It is hoped that this opinion fully addresses the questions which you have raised. 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 horizontal flourish extending to the right.

Donald H. Cookman, Chairperson
Judicial Investigation Commission

DHC:nb