



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
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May 7, 2003

Re: JIC Advisory Opinion 2003-07

Dear

I a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. The Commission has reviewed your request at a recent meeting. In your letter you asked three basic questions: (1) what possible conflicts would you have when former clients appear before you as magistrate and your obligations regarding recusal if a former client is arrested and brought to you for an initial appearance while you are conducting court at night or on a weekend; (2) the propriety of you continuing to serve on the Board of Directors of a nonprofit volunteer organization whose mission is "to promote traditional music and dance in the Kanawha Valley"; and (3) whether you may continue to practice law under the provisions of Article VIII, Section 7 of the West Virginia Constitution.

To address the questions which you have raised, the Commission has forwarded to you a prior advisory opinion issued by the Commission regarding your requirements for disqualification when former clients appear before you. See, JIC Advisory Opinion March 16, 1999. To address the additional question which you have raised regarding your obligation to recuse yourself if you are conducting court on the weekend or at night when a former client may appear before you, the Commission has reviewed the relevant sections of Canon 3E of the Code of Judicial Conduct. That Canon says in relevant part:

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

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E. Disqualification. - (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. . . .

The commentary to that Canon states "*A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.*" It is the understanding of the Commission that the Kanawha County Magistrate Court has a mechanism for situations if a magistrate has a conflict or cannot otherwise perform his or her judicial duties. Because of the number of judicial officers available in Kanawha County, it is the opinion of the Commission that you must utilize the procedures to have another magistrate conduct initial appearances for former clients who may appear before you on the weekends or at night.

To address the question which you have raised about your continued service on the Board of Directors of _____, the Commission has reviewed relevant portions of Canon 4. That Canon states in relevant part:

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

C. Governmental, civic, or charitable activities.

(3) Civic and charitable activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or non-legal adviser of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members subject to the following limitations:

(a) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(b) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of office for the purpose; but a judge may be listed as an officer, director, or trustee of such an organization, so long as the listing is not used for fund-raising purposes. A judge should not be a speaker or the guest of honor at an organization's fund-raising events, but may attend such events.

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Based upon the activities of the organization set forth in your letter and the language contained in Canon 4, it is the opinion of the Commission that you could continue to serve on the Board of Directors of _____ so long as you do not involve yourself in any fundraising activities.

It is the feeling of the Commission that in order for you to determine what activities, if any, you may continue to engage in as an attorney you should confer with the Chief Circuit Judge of _____ County. If the issue cannot be addressed after a conference with the Chief Circuit Judge, the Commission will be happy to review any questions which may arise concerning that situation.

It is hoped that this opinion fully addresses the questions which you have raised. If you have any further question regarding these matters 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

Enclosure