



JUDICIAL INVESTIGATION COMMISSION

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

January 4, 2011

Re: JIC Advisory Opinion 2011-02

Dear Judge

In a recent letter you asked for an advisory opinion. You stated that you have a recently indicted defendant in your court who was a co-defendant of a man you represented before you took the bench in Family Court. The two men were related and charged in a combined indictment. You represented the co-defendant, who happens to be the father of the currently indicted defendant (and co-defendant in the prior case). You have no connection with the newly indicted defendant through an attorney client relationship or otherwise. You have advised the parties that you may have to voluntarily disqualify yourself in this matter.

The Commission has reviewed your request at a recent meeting. During the review the Commission looked at Canon 3E of the Code of Judicial Conduct. Canon 3E stated 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, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

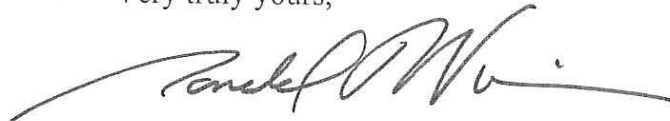
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(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it; . . .

After reviewing your letter and the relevant sections of Canon 3, the Commission would advise that you review these sections of 3E to determine whether based upon the facts which you currently have before you, your recusal should be made. Since you have advised the parties about the situation, one of them may decide to file a Motion for your recusal and the provisions for handling such motions would then be followed.

It is hoped that this opinion fully addresses the question 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 "Ronald E. Wilson", with a long horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW:nb