



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
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Charleston, West Virginia 25304
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June 28, 2011

Re: JIC Advisory Opinion 2011-12

Dear Judge

In a letter to the Commission you asked for an advisory opinion. In the correspondence you stated that two respondent parents in an abuse and neglect matter presently pending before your Court also appeared in the Family Court in _____ County while you were the Family Court Judge. Specifically, you dealt with issues of custody disputes between _____ and _____ (respondents in the present action) regarding the minor _____ so a minor involved in the present abuse and neglect matter). You stated that in the past the West Virginia Supreme Court of Appeals has required your disqualification in all cases which you, at any time, presided over as family court judge. The present case does not involve any issues which you heard as family court judge, rather it involves two parties that you dealt with as family court judge. You also stated that you have brought the issue to the attention of all parties and counsel and requested any objection to your continuing to preside over the case be made with five days. No objection has been timely made. You asked whether you can continue presiding over the matter as the case has been going on for some time and at this point the matter is at the adjudication stage.

The Commission has reviewed your correspondence and feels that since no one has raised the issue of recusal, the Supreme Court will not be given an opportunity to address that question. However, you state in your letter that in all previous cases in which you presided as family court judge, the West Virginia Supreme Court of Appeals has required your disqualification. Obviously if the Supreme Court of Appeals required your disqualification, that would clearly address the issue. Since that does not appear to be possible in this case, the Commission feels that you may continue but should consider whether disqualification would be appropriate given the past decisions of the Supreme Court regarding cases in which you presided as the family court judge.

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It is hoped that this opinion fully addresses the question which you have raised. If you have any further question do not hesitate to contact this office.

Very truly yours,

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

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