



JUDICIAL INVESTIGATION COMMISSION

Building 1, Room E400
1900 Kanawha Boulevard, East
Charleston, WV 25305-0834

September 17, 1993
JIC Advisory Opinion 1993-20

Dear Judge :

Your recent letter to the Judicial Investigation Commission in which you sought an advisory opinion was reviewed by the Commission at its most recent meeting. In that correspondence you requested an advisory opinion as to whether you must voluntarily recuse yourself from two pending civil cases currently assigned to your division of the County Circuit Court. You stated that in both civil cases the defendant had also been a defendant in criminal proceedings while you were Prosecuting Attorney for County.

Based upon the representations made in your letter as well as a review of the Code of Judicial Conduct and other advisory opinions issued by the Commission, the Commission feels that your continued presiding in these cases would be inappropriate. Canon 3E(1)(b) states in pertinent part:

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL
OFFICE IMPARTIALLY AND DILIGENTLY

. . . .

E. Disqualification.

The Honorable

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September 17, 1993

(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:

. . . .

(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;

The language contained in this Canon would prohibit you as Circuit Judge from presiding in these cases.

Also enclosed for your review are advisory opinions previously issued by the Commission on matters similar to your situation. While you are involved in civil cases and the advisory opinions address criminal matters or quasi-criminal matters, the Commission felt that the language contained in the Canon would extend to your facts as well.

It is hoped that this opinion adequately addresses the concerns which you have raised. If there is any further question concerning these matters, do not hesitate to contact the Commission.

Very truly yours,

Fred L. Fox, II

Fred L. Fox, II, Chairman

FLF,II/bl
Enclosures