



JUDICIAL INVESTIGATION COMMISSION

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

February 25, 1994

Re: JIC Advisory Opinion 1994-04

Dear

Your recent letter to the Judicial Investigation Commission seeking an advisory opinion was reviewed by the Commission at its recent meeting. In that correspondence you state that your wife is currently a candidate for the office of prosecuting attorney in County. You state that you are currently a Magistrate. Your inquiry addresses two areas:

First, you want to ascertain what activities you may engage in during your wife's campaign;

Second, you ask how your duties as a Magistrate would be affected if your wife were elected to the office of prosecuting attorney.

In addressing the first five questions which you have raised regarding which activities you may engage in during your wife's campaign, the Commission has looked to Canon 5 of the Code of Judicial Conduct. That Canon states in pertinent part:

CANON 5

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN
FROM INAPPROPRIATE POLITICAL ACTIVITY

A. All Judges and Candidates.

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(1) Except as authorized in Sections 5B(2), 5C(1), and 5C(3), a judge or a candidate for election or appointment to judicial office shall not:

- (a) act as a leader or hold an office in a political organization;
- (b) publicly endorse or publicly oppose another candidate for public office;
- (c) make speeches on behalf of a political organization;
- (d) publicly display any campaign paraphernalia in any area where judicial activities are conducted or knowingly permit any such display;
- (e) solicit funds for a political organization or candidate.

Based upon the relevant language contained in Canon 5, it would be permissible for you to attend campaign rallies or other social functions with your wife. However, you could not engage in any fund raising activities. It would not be permissible for you to perform volunteer manual labor connected with her campaign. It would not be permissible for you to drive a vehicle normally driven by your wife when that vehicle had her campaign stickers displayed. It would not be permissible for you to assist in handing out campaign signs or posters that had been previously requested by individuals. Nor would it be permissible for you to deliver and pickup items from the printers or commercial advertisers at the request of your wife or a member of her campaign committee.

The language in Canon 3E of the Code of Judicial Conduct addresses the second area of your inquiry. That language of Canon 3 states in pertinent 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

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reasonably be questioned, including but not limited to instances where:

. . . .

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(ii) is acting as an attorney in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding.

Based upon the language contained in this section of Canon 3, it is the opinion of the Commission that if your wife were elected to the office of prosecuting attorney you would be disqualified from handling all criminal cases even those handled solely by one of the assistant prosecuting attorneys. You would not be able to issue search warrants, domestic violence petitions, or conduct initial appearances or arraignments on criminal warrants. The Code of Judicial Conduct does not have a provision which allows a disclosure of any conflict of interest and permit the parties to enter into a waiver of such conflict.

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

Very truly yours,



Fred L. Fox, II, Chairman

FLF,II/bl