



JUDICIAL INVESTIGATION COMMISSION

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

February 25, 1994

Re: JIC Advisory Opinion 1994-05

Dear

Your correspondence to me in which you seek an advisory opinion has been reviewed by the Judicial Investigation Commission at its recent meeting. In that correspondence you state that you have a nephew by marriage who will be becoming an associate with a _____ County, West Virginia, law firm. You state you are the Chief Judge in the _____ Judicial Circuit which includes _____ and as such you are responsible for court appointments of panel attorneys to represent indigent persons charged with criminal offenses. You have no public defender system or office available in your circuit.

You indicate that you are in a two-judge circuit and that another judge is available for all matters and proceedings in which you might be disqualified and that the other judge could also handle the administrative duties of appointment of counsel if necessary.

As you state in your letter Canon 3C(4) and 3E(1)(d)(ii) of the Code of Judicial Conduct control the questions which you have raised. Those two sections of Canon 3 state:

CANON 3

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

C. Administrative Responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not

February 25, 1994

approve compensation of appointees beyond the fair value of services rendered.

. . . .

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:

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

(ii) is acting as a lawyer in the proceeding.

The language in these pertinent sections of Canon 3 address those concerns which you have raised in your letter.

After review of your request for an advisory opinion and the relevant sections of Canon 3 as set forth hereinabove, it is the opinion of the Judicial Investigation Commission that you would be prohibited from appointing your nephew by marriage in any matters. Also, you would be prohibited from sitting as a judge in those proceedings in which he was engaged as an attorney. The Commission feels that the prohibitions are mitigated somewhat since there is another judge in your circuit who could handle any appointment duties and/or sit on cases in which your nephew by marriage was acting as an attorney.

It is hoped that this opinion addresses all of the matters which you have raised. If there is any further question concerning these matters or any other relevant concerns, please feel free to contact the Commission.

Very truly yours,

Fred L. Fox, II

Fred L. Fox, II, Chairman

FLF,II/bl