

April 14, 1994

Re: JIC Advisory Opinion 1994-07

Dear

Your letter to the Judicial Investigation Commission seeking guidance on the approval of outside employment by judicial officers has been reviewed by the Commission at a recent meeting. In your correspondence you refer to the language contained in Canon 4D(1)(a) of the Code of Judicial Conduct and request some direction when approval for outside employment requests are received from judicial officers. After reviewing your request the Commission asked Counsel to review Canon 4D and prepare a memorandum for the Commission's review on the Canon. A copy of this memorandum is attached to this opinion.

Canon 4 of the Code of Judicial Conduct establishes guidelines governing extra judicial activities by judges. Canon 4D(3) sets forth that:

(3) A judge shall not serve as an officer, director, manager, general partner, adviser or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

April 14, 1994

This language, while limiting the kinds of employment activity in which a judge may engage, does allow extra judicial employment under certain conditions.

Canon 4D(1)(a) states:

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position.

Reading this language together with that contained in 4D(3), it is felt by the Commission that certain limited employment is permissible so long as that activity may not reasonably be perceived to exploit the judge's judicial position. It is obvious that Canon 4D does not provide a precise definition of permissible employment nor does it establish a bright line standard by which determinations of extra-judicial employment may easily be made in general terms.

The Commission further understands that the Supreme Court Personnel Manual permits certain outside employment by judicial branch personnel but that any outside employment that might be construed as compromising or interfering with performance in a judicial branch position is prohibited. Prior to engaging in outside employment for remuneration the Personnel Manual requires an employee to submit a written request to the Administrative Director for review and approval.

After reviewing the controlling language of Canon 4 and the Personnel Manual of the Supreme Court as well as cases which have been decided in other jurisdictions discussing outside employment by judicial officers, the Commission feels that each request must be dealt with individually and that no standard governing all requests can be drafted. An added element of concern is the potential for exploitation of the judicial position. This possibility exists in every outside employment situation and must be analyzed carefully when determining if a given request should be approved. Each request must be reviewed in terms of the language in Canon 4 and the description and job requirements of the employment sought.

It is hoped that the memo which is attached hereto will serve as some guidance when requests for outside employment

- 3 -

April 14, 1994

are reviewed. If any additional information can be provided by the Commission, do not hesitate to contact it.

Very truly yours,

Fred L. Fox, II, Chairman

CRG/bl  
Enclosure