



JUDICIAL INVESTIGATION COMMISSION

Room E-400, State Capitol

Charleston 25305

August 10, 1994

Re: JIC Advisory Opinion 1994-11

Dear

Your recent letter to Judicial Disciplinary Counsel has been referred to the Judicial Investigation Commission for review and response to your request for an advisory opinion.

In that correspondence you indicate that as Mental Hygiene Commissioner you are scheduled to hear a case upon a Petition for Appointment of a Guardian and Conservator for an alleged incompetent pursuant to West Virginia Code §44A-1-1 et seq. You further state that in April, before the effective date of this legislation, you were appointed by the County Commission as Guardian Ad Litem for this individual. At that time she was represented also by private counsel. No incompetence was found by the County Commission. You asked whether you would be permitted based on these facts to hear this matter as Mental Hygiene Commissioner.

As you state in your correspondence Canon 3E of the Code of Judicial Conduct deals with judicial disqualification in proceedings. That Canon 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 reasonably be questioned, including but not limited to instances where:

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(a) The judge has a personal bias or prejudice concerning the party or the party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding; . . .

In this instance the facts would demonstrate that your impartiality might reasonably be questioned and that you would have a personal knowledge of potentially disputed evidentiary facts concerning the proceeding.

Based upon the language contained in the pertinent parts of Canon 3, it is the feeling of the Commission that you would be disqualified from hearing this case since you served as a Guardian Ad Litem for this individual in the matter in controversy.

It is hoped that this opinion fully addresses the issues about which you have inquired. 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

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