

JUDICIAL INVESTIGATION COMMISSION

212 Dickinson Street
Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 FAX (304) 558-0831

December 12, 1994

Re: JIC Advisory Opinion 1994-23

Dear

In a recent letter to the Judicial Investigation Commission you requested an advisory opinion concerning various matters relative to your wife's being employed by a corporation that provides in-house services to juveniles in the County area and your ability to sit on juvenile cases under various factual scenarios presented by you.

In that correspondence you set forth information which raises nine separate questions under the facts which you have presented. The scenarios cover a range of inquiries from your sitting on a juvenile case before any involvement by an entity to provide services to the juvenile through a situation in which the probation officer makes the recommendation of a dispositional plan to which there is no dispute and there is full disclosure that your wife is employed by the corporation providing services to which there is no objection raised. You asked in all of the various scenarios whether it would be appropriate for you to order a dispositional plan for the juvenile with services being rendered by the corporation employing your wife.

Also in your correspondence you asked if it would be proper for you to place a juvenile in a program being provided by the corporation employing your wife as part of a probationary plan. You asked if it would be appropriate for you to hear evidence concerning a probation violation in such

December 12, 1994

instance if it did not relate to the juvenile participation in the corporation's program; whether it would be appropriate for you to hear evidence concerning a probation violation if it related to the juvenile's participation in the corporation's program but your wife did not testify; and whether it would be proper for you to hear evidence concerning a probation violation if the evidence were provided by an employee of the corporation either for or against the probation violation. Throughout all of the questions which you posed, it was assumed that if your wife were to testify, you would recuse yourself and transfer the case to another court. Also if anyone expressed a concern over your wife's being employed by the corporation, you would transfer the case to another court.

The issues which you have raised in your letter to the Commission can be best addressed by review of Canon 2A and Canon 3E of the Code of Judicial Conduct. Canon 2 states in pertinent part:

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The pertinent language of Canon 3E states:

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 question

After reviewing the questions which you have raised and the language set forth in the pertinent sections of Canon 2 and Canon 3, the Commission feels that if you hear cases involving the corporation which employs your wife or if you

- 3 -

December 12, 1994

refer cases to that corporation, this action would create the appearance of impropriety.

If you have any further questions concerning this matter, do no hesitate to contact the Commission.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Fred L. Fox, II". The signature is stylized with a large, bold "F" and "L".

Fred L. Fox, II, Chairman

FLF,II/bl