

JUDICIAL INVESTIGATION COMMISSION

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

February 21, 1995

Re: JIC Advisory Opinion 1995-03

Dear

In a letter to the Judicial Investigation Commission dated January 6, 1995, you asked for an advisory opinion and the Commission addressed this request between its regularly scheduled meetings in an opinion to you dated January 20, 1995.

In your correspondence you stated that a procedure had been adopted in connection with uncontested divorce matters in which irreconcilable differences are the ground for the divorce. You stated that in those cases where irreconcilable differences are alleged and an admission of the allegation is made in the answer and there is filed a mutually satisfactory agreement outlining the distribution of assets and alimony, the attorneys or parties may submit to you directly a properly endorsed motion and a final order is entered as a matter of course. You also asked about the propriety of the attorney who is engaged to your daughter representing a party in those uncontested divorce cases. The Commission addressed your question about the ability of the attorney who is engaged to your daughter to represent a party in those actions in its January 20, 1995, opinion.

However, at a regularly scheduled meeting held recently the Commission felt it necessary to review and address the procedure which you outlined for handling uncontested divorces in which irreconcilable differences are a ground for the divorce. The procedure as you outlined it would not comport to the requirements set forth in West Virginia Code §48-2-16(a) and §48-2-32(b) if no hearing were conducted by the Court so that a finding could be made that the agreement was

made without fraud, duress, or other unconscionable conduct by one of the parties. Further, the statute requires a finding that the separation agreement can be incorporated into a judicial order which would be enforceable by the Court in future proceedings and that the agreement viewed in the context of the actual contributions of the respective parties is not inequitable and was not inequitable at the time it was executed.

In addition, under our statutory framework respecting divorce, a court must ensure that divorces are not granted contrary to law and that one party does not take advantage of the other. These concerns are heightened where one or both of the parties are not represented by a lawyer.

Canon 3 of the Code of Judicial Conduct states in pertinent part:

CANON 3

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

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties the following standards apply:

B. Adjudicative Responsibilities.

. . . .

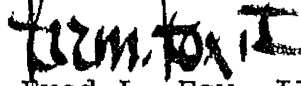
(2) The judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

The language set forth in these pertinent sections of Canon 3 would require that any procedure utilized permit the judge to comply with the statutory mandates set out in §48-2-16 and §48-2-32.

It is hoped that this opinion fully addresses those issues which you raised in your correspondence to the Commission on January 6, 1995. If you have any question concerning any of these matters, do not hesitate to contact the Commission.

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Very truly yours,

A handwritten signature in dark ink, appearing to read "Fred L. Fox, II". The signature is written in a cursive, somewhat stylized font with a large initial "F".

Fred L. Fox, II, Chairman

FLF,II/bl