

JUDICIAL INVESTIGATION COMMISSION

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

March 9, 1995

Re: JIC Advisory Opinion 1995-04

Dear

Your letter to Counsel dated March 8, 1995, in which you ask for an advisory opinion has been reviewed by the Judicial Investigation Commission. In that correspondence you state that the Office of the Prosecuting Attorney of _____ County has concern about your presiding over criminal cases in _____ County as a result of your hiring a secretary from the Prosecuting Attorney's office effective January 31, 1995. You indicate that the secretary worked in the Prosecuting Attorney's office from September 1, 1988, until January 4, 1995. She handled no grand jury investigations and very few criminal indictments.

The language contained in Canon 3 A and B(1) and Canon 3 E is relevant to the opinion which you seek based on the facts which you have presented to the Commission. Those sections of Canon 3 state in relevant 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.

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B. Adjudicative Responsibilities.

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

E. Disqualification.

- (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . .

The language set forth in these sections of Canon 3 place a responsibility on a judge to hear and decide all matters assigned to the judge except when disqualification is required. The duty to sit on cases is mandated by Canon 3 B(1). Canon 3 E requires a judge to disqualify himself or herself from a proceeding in which the judge's impartiality might reasonably be questioned.

Based on the facts which you have presented in your request and on the information contained in the request that your current secretary handled no grand jury investigations and very few criminal indictments, there would not be raised a situation which brought your impartiality into reasonable question. Furthermore, the duties of a secretary would not place her in the same position as an attorney in that office who would be preparing an investigation or case by developing strategies, interviewing witnesses, and receiving confidential information. For these reasons the Commission can find no conflict as a result of your current secretary's former employment. If there is any additional question about the issues which you have raised or the opinion of the Commission, do not hesitate to contact the Commission.

Very truly yours,



Fred L. Fox, II, Chairman

FLF,II/bl

cc: Members, Judicial Investigation Commission