



JUDICIAL INVESTIGATION COMMISSION

212 Dickinson Street
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June 14, 1995

Re: JIC Advisory Opinion 1995-16

Dear

In letters to the Judicial Investigation Commission dated April 20, 1995, you stated that you were recently appointed as a Magistrate in County. You also indicated that you are a practicing attorney. You asked whether you could continue your membership in the West Virginia Trial Lawyers Association. You also stated in your correspondence that as part of your law practice you have served as a mediator and would like to continue to serve as a mediator or arbitrator when called upon to do so. You asked whether you could continue these practices.

The language contained in Canon 4C(3) of the Code of Judicial Conduct governs the resolution of your inquiry regarding membership in the West Virginia Trial Lawyers Association. That section of the Canon states in pertinent part:

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL
ACTIVITIES AS TO MINIMIZE THE RISK OF
CONFLICT WITH JUDICIAL OBLIGATIONS

C. Governmental, Civic, or Charitable Activities.

(3) Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial

June 14, 1995

duties. A judge may serve as an officer, director, trustee, or non-legal adviser of an educational, religious, charitable, fraternal, or civil organization not conducted for the economic or political advantage of its members subject to the following limitations:

(a) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

Based on the language contained in this section of the Canon, the Commission feels that you should not continue your membership in the West Virginia Trial Lawyers Association.

You also asked whether you could continue to serve as an arbitrator or mediator since you have performed in those capacities as a practicing attorney. The provisions of Article VIII, Section 7, of the Constitution of West Virginia permit attorneys who are magistrates to practice law except to the extent prohibited by the Legislature and precludes a prohibition of such magistrates from practicing law as has been stated in Canon 4G of the Judicial Code of Ethics. See Judicial Inquiry Commission v. Allamong, 162 W.Va. 652, 252 S.E.2d 159 (1979).

Based on this opinion of the Supreme Court of Appeals setting forth the perimeters of the constitutional language permitting a magistrate to practice law in this state, the Commission feels that you could continue to perform functions as an arbitrator and mediator when called upon to do so. While these practices are prohibited by Canon 4F of the Code of Judicial Conduct for judges the constitutional language and the subsequent opinion of our Supreme Court interpreting that language would overrule any such prohibition for magistrates who are practicing attorneys.

It is hoped that this opinion fully addresses the questions which you have raised. If there is any additional information needed from the Commission, do not hesitate to contact it.

Very truly yours,



Fred L. Fox, II, Chairman