



JUDICIAL INVESTIGATION COMMISSION

212 Dickinson Street
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March 4, 1996

Re: JIC Advisory Opinion 1996-08

Dear

Your letter to Counsel for the Judicial Investigation Commission was reviewed by the Commission at its recent meeting. In that correspondence you state that you have taken Senior Status with the West Virginia Supreme Court and will no longer be sitting with the Court after January 1, 1996, except on those occasions when one of the Justices has recused himself or herself in a case. You indicate that you act as Special Counsel to a law firm under (a)(3)(B) of the Administrative Rule on Retired Judges Admitted to Senior Status. You stated that recently you have been contacted by attorneys outside the firm who wish you to associate with them on an appeal to the Supreme Court. They seek your advice and help on the brief and would want you to place your name on it. They would make the actual presentation to the Court although, on one occasion, an attorney asked if you would make the presentation. You would be compensated for your time.

Addressing the request which you have made, the Commission considered the language in Canon 6B(2) and Canon 4G of the Code of Judicial Conduct as well as Administrative Rule on Retired Judges Admitted to Senior Status (a)(3)(B). Canon 4G prohibits a judge from practicing law. Canon 6B(2) states that a retired judge admitted to senior status who "engages in limited law practice" is not required to comply with Canon 4G.

The Administrative Rule on Retired Judges Admitted to Senior Status sets forth the perimeters within which the practice of law is permitted while still maintaining eligibility for senior status. The Rule states at (a)(3)(B) as follows:

(a) Eligibility.

(3) Practice of Law.

March 4, 1996

(B) Engagement in a limited law practice (e.g., no association with a law firm, except if employed as "of counsel" or "special counsel," or part-time law practice) shall not disqualify retired judge or justice from eligibility for senior status, however, a retired justice or judge admitted to senior status shall be disqualified from assignment to duty in any circuit where he or she engages in practice, or from any matter in which the law firm in which he or she is employed as "of counsel" or "special counsel" is involved or has participated. For purposes of this Rule, the terms "of counsel" or "special counsel" shall mean employment by a law firm that does not include (1) any partnership interest in the firm; (2) appearance before any tribunal representing any client of the firm; (3) work in the firm on a full-time basis; and (4) a salary equivalent to or greater than any partner in the firm. (Emphasis supplied)

The language of this Rule states that a retired justice or judge admitted to senior status shall be disqualified from assignment to duty "in any circuit where he or she engages in practice." This language attempts to remove any real or perceived conflict which a senior status justice or judge may have regarding that position and a limited law practice.

It is the opinion of the Commission that this language by analogy would require you to be disqualified from assignment to duty as a special justice on the Supreme Court if you, as an attorney engaged in a limited practice, had any matters filed there or represented any clients before that Court.

If there is any other question regarding this matter, do not hesitate to contact the Commission.

Very truly yours,



Fred L. Fox, II, Chairman

FLF, II/bl