



JUDICIAL INVESTIGATION COMMISSION

212 Dickinson Street
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November 26, 1996

Re: JIC Advisory Opinion 1996-30

Dear

The Judicial Investigation Commission has reviewed your recent request for an advisory opinion which was sent to Counsel to the Commission in a letter dated November 21, 1996. In that correspondence you indicated that you were a newly elected magistrate for _____ County and are also a practicing attorney. Since January, 1993, you have served as a part-time assistant prosecuting attorney for _____ County. Your duties include one-third to one-half of the magistrate Court criminal docket. The full-time prosecutor and the other part-time assistant handled the balance of the cases. You stated that you work out of your office and only have access to those criminal files for matters which are scheduled for your days in magistrate court.

In your letter you asked the Commission for an opinion on the extent to which you will be conflicted out of hearing matters which are pending prior to your taking office as magistrate. Your last day as prosecutor in magistrate court was November 15, 1996, and you will remain an assistant prosecutor until you take office as a magistrate. The question which you have raised is addressed by Canon 3E of the Code of Judicial Conduct.

Canon 3E states in pertinent:

Canon 3. A judge shall perform the duties of judicial office impartiality and diligently.

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E. Disqualification. - (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it . . .

Based on the language set forth in this section of Canon 3E you could not hear any cases which were pending in the prosecuting attorney's office while you served as part-time assistant prosecuting attorney. Any criminal cases about which you communicated with anyone in your role as assistant prosecuting attorney or knew of communications with other attorneys in the prosecuting attorney's office prior to the case having come to the prosecuting attorney's office, you should disqualify yourself from also.

You should note that the commentary to Canon 3E states that a judge should disclose information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification even if the judge believes there is no real basis for disqualification.

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

Very truly yours,


Fred L. Fox, II, Chairman

FLF, II/bl