



JUDICIAL INVESTIGATION COMMISSION

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

December 6, 1996

Re: JIC Advisory Opinion 1996-31

Dear

In a letter to Commission Counsel you asked for an advisory opinion regarding your ability to handle certain matters as a practicing attorney since you are a newly elected magistrate for _____ County. You stated that you are currently handling two cases which require that an appeal be filed with the Supreme Court of Appeals of West Virginia. You stated that it would appear to you that as an employee of the Supreme Court you would be conflicted out of these matters. You asked for an opinion regarding whether you could handle these appeals.

The Constitution of West Virginia Article 8, Section 7, permits attorneys who are magistrates to practice law except to the extent prohibited by the Legislature. This provision of the State Constitution precludes the Supreme Court of Appeals from prohibiting magistrates from practicing law such as it does other judges under Canon 4G of the Code of Judicial Conduct.

Any limitations placed by the Legislature on attorney-magistrates would be found in West Virginia Code §50-1-4 and §50-1-12. There is nothing in either of these sections of the Code which suggest that the Legislature has prohibited an attorney-magistrate from practicing law before the Supreme Court of Appeals. There does not appear to be a constitutional or legislative prohibition against an attorney-magistrate handling the kinds of matters which you describe in your correspondence; and you would, therefore, not be conflicted from handling those matters.

December 6, 1996

You should keep in mind, however, as our Supreme Court stated in West Virginia Judicial Inquiry Commission v. Allamong, 162 W.Va. 652, 262 SE 2d 159 (1979):

[w]e do not mean to suggest that an attorney who is a magistrate can engage in the practice of law to the extent that it interferes with the full performance of his duties magistrate. Having asked voters to elect him as magistrate, his first obligation is to that office because a magistrate is a judicial officer, he is subject to all the Canons of the Judicial Code of Ethics, except Canon 5(F). He must not, through his activities as an attorney, jeopardize his magistrate office or its integrity, propriety, or impartiality. 252 SE 2d at 164

If you have any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Fred L. Fox, II". The signature is stylized with a large, bold "F" and "X".

Fred L. Fox, II, Chairman

FLF, II/bl