



## JUDICIAL INVESTIGATION COMMISSION

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

February 6, 1997

Re: JIC Advisory Opinion 1997-04

Dear

Your letter to Counsel to the Judicial Investigation Commission in which you seek an advisory opinion was reviewed by the Commission at its recent meeting. In that inquiry you stated that you would take office as Judge of the Judicial Circuit on January 1, 1997. You indicated that you currently serve as attorney in fact for an 89-year old woman in . Since her husband's death 15 years ago, you have been one of her only sources of contact. She lives alone and has no children or other family members with the exception of an 84-year old sister-in-law and a mentally impaired nephew who live in the State of Florida. For many years you have assisted her with her affairs and have been the only person to visit her with the exception of her sister-in-law from Florida who visits very infrequently.

Over the years you have developed a close relationship although you are not related. You stated that you are not named in her will and do not stand to benefit financially from her. Her will leaves all her property to her nephew and/or her sister-in-law in Florida.

You further stated that since February, 1996, you have had people working in her home around the clock to care for her. You have handled all of her business affairs through a power of attorney. She is not incompetent; however, she is very distrusting of people in general and is unwilling to allow any other person to have access to her financial affairs although she is unable to handle her own affairs because of her condition.

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You stated that you are willing to continue looking after her without payment or consideration of any kind. However, you did not want to be in violation of Canon 4E(1). You asked whether you may continue serving as her attorney in fact now that you are serving as Judge of the \_\_\_\_\_ Judicial Circuit.

Canon 4E(1) of the Code of Judicial Conduct states as follows:

Canon 4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

E. Fiduciary activities. - (1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with proper performance of judicial duties.

This section of the Code contains a term "member of the judge's family" which is defined in the terminology section of the Code.

Member of the judge's family is defined as "a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familiar relationship." This definition seems to take into account a situation such as you have described in your letter to the Commission. The definition suggests that a "member of the judge's family" does not have to be only a relative but it may be any "person with whom the judge maintains a close familiar relationship."

It is the opinion of the Commission based upon the factual scenario which you have presented that you have a familiar relationship with the elderly woman for whom you serve as attorney in fact. Based upon this relationship and the exception set forth in Canon 4E(1) it is the opinion of the Commission that you could continue to serve in that capacity.

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