



JUDICIAL INVESTIGATION COMMISSION

212 Dickinson Street
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Charleston, West Virginia 25326-1629
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February 7, 1997

Re: JIC Advisory Opinion 1997-09

Dear

Your request for an advisory opinion sent to Counsel was reviewed by the Judicial Investigation Commission at its recent meeting. In that letter you state that the County Prosecuting Attorney recently hired your third cousin in a position styled paralegal/office manager. You asked whether this causes a problem for you with respect to the criminal cases assigned to you.

To address your inquiry the Commission reviewed Canon 3E (1) (d) (i) (ii) (iii) (iv). That section of the Code of Judicial Conduct states in pertinent part:

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

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

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director of trustee, of a party;

(ii) is acting as a lawyer in the proceeding;

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(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

The term "the third degree of relationship" is defined in the terminology section of the Code of Judicial Conduct. That section states that "the following persons are relatives within the third degree of relationship: great grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great grandchild, nephew, or niece." Based on the information which you have provided the Commission and the language set forth in the Code of Judicial Conduct, the employment of your third cousin by the Prosecuting Attorney's office would not have any effect on your handling of criminal matters.

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