



JUDICIAL INVESTIGATION COMMISSION

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

June 30, 1997

Re: JIC Advisory Opinion 1997-18

Dear

Your recent letter requesting an advisory opinion has been reviewed by the Judicial Investigation Commission. In that correspondence you asked for an opinion regarding whether or not you were disqualified from presiding over matters involving two local attorneys who are tenants in a building that is owned solely by your spouse and has been so owned for approximately ten years. You stated that you are not a party to the lease agreement between your spouse and the attorneys. However, lease proceeds could indirectly benefit the family unit. You have taken the position that you are disqualified from presiding over those cases until such time as the building is sold. You also stated that your spouse has indicated a willingness to try to locate a purchaser for the property. You asked whether your wife's ownership disqualifies you from presiding in matters or whether you may preside after full disclosure and waiver of the disqualification is made.

The inquiry which you have made is addressed by Canon 4D of the Code of Judicial Conduct and the following commentary. Those sections of the Canon state in relevant part:

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

D. Financial Activities. - (1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

June 30, 1997

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

While this language addresses the judge's involvement in financial activities, it does not fully address your inquiry since your wife owns the rental property.

The commentary following Canon 4D elaborates on some of the implications contained in the Canon. It states in relevant part:

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploration of office or favoritism and to minimize the potential for disqualification. . . .

The language set forth in the commentary would suggest that you should take action necessary to discourage your wife from becoming involved in situations which you are prohibited from becoming involved in under the terms of Canon 4D.

While the language is not definitive in addressing clearly the questions which you have raised, it is the opinion of the Commission that you should disqualify yourself from those cases involving the two attorneys who rent office space from your spouse. The commentary strongly suggests that this action on your part would be necessary. See also Matter of Means, 192 W. Va. 380, 452 S.E.2d 696 (1994).

Notwithstanding the opinion of the Commission that you must disqualify yourself from all cases involving the two attorneys who rent office space from your spouse, there is a minority view which some members of the Commission want stated in this correspondence. That view is that you would be required under the terms of the Canon to disclose the relationship and the financial dealings between the attorneys and your spouse so that the parties or their attorneys could decide whether to seek your disqualification from a given case. The minority view will take into consideration the fact that your spouse owned the property long before you

June 30, 1997

became a judge and the financial dealings were outside your control or purview at the time. It would also consider the fact that you did not transfer your property to your wife to evade Canon 4D. As has been stated, this is a minority position and not the opinion of the full Commission.

It is hoped that this opinion addresses those issues which you have raised in your correspondence. If there is any further question regarding these matters, 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 some overlapping letters.

Fred L. Fox, II, Chairman

FLF,II/bl