



JUDICIAL INVESTIGATION COMMISSION

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

March 21, 2002

Re: JIC Advisory Opinion 2002-09

Dear

Your recent request for an advisory opinion has been reviewed by the Judicial Investigation Commission. In that request you state that you were appointed to represent _____ by the Circuit Court on January 9, 2002. Both you and your law partner, _____, are Mental Hygiene Commissioners for the _____ Judicial Circuit. Your law partner told you that she had committed _____ at least four times and she believes that should disqualify you from representing him. You stated that at the time _____ committed _____, you were not law partners. You asked that an advisory opinion be issued to assure that you do not have a conflict of interest in representing _____.

To address the question which you have raised, the Commission reviewed the applicable sections of Canon 6 of the Code of Judicial Conduct. Canon 6C defines a continuing part-time judge which includes the Office of Mental Hygiene Commissioner. The commentary to that section of Canon 6 states in relevant part:

[n]or shall a Mental Hygiene Commissioner accept any mental hygiene matters or serve as an attorney in any proceeding related to a case in which he or she has served as a Mental Hygiene Commissioner . . .

This section of the Canon relates to potential conflicts which you may have as a Mental Hygiene Commissioner in representing clients as an attorney.

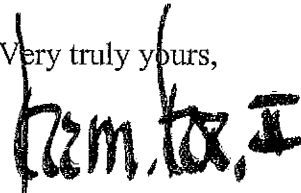
March 21, 2002

Page Two

The factual scenario which you presented to the Commission indicated that your current law partner conducted hearings for the defendant you have been appointed to represent at a time when you and she were not law partners. The matters over which your current law partner presided were independent from any legal relationship you now have and from any of your activities as a Mental Hygiene Commissioner or an attorney. For this reason, it is the opinion of the Commission that you would not be precluded from representing _____ as appointed to do so by the Circuit Court.

It is hoped that this opinion fully addresses the issue which you have raised. The Chairman of the Commission, _____ did not participate in the review or issuance of this opinion.

Very truly yours,

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

Fred L. Fox, II, Vice-Chairperson
Judicial Investigation Commission

FLF,II:nb