



## JUDICIAL INVESTIGATION COMMISSION

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March 17, 2003

Re: JIC Advisory Opinion 2003-05

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. In that correspondence you stated that your wife is the owner of several commercial buildings. One of those buildings is an office building located in \_\_\_\_\_ County West Virginia. You do not have any ownership interest whatsoever in the building. Your wife has owned the building since May 15, 1995. She leased the building to an unrelated individual who then as a sub-lessor rented a space within the building to an attorney. Your wife has no contact whatsoever with the attorney and all lease payments are tendered from the sub-lessor to your wife. Your spouse has no interaction or dealings with the attorney tenant and does not receive any rentals from the attorney tenant. She has indicated that she does not know the terms of the sublease nor does she have any contact financially or otherwise with the attorney sublessee. You stated that you have no ownership, interest, control or responsibility relative to the building. You asked whether you should voluntarily recuse yourself in matters involving the attorney who may appear before your court.

To address the question which you have raised, the Commission has reviewed Canon 4D of the Code of Judicial Conduct. That section of Canon 4 states in relevant part:

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

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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
- (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.

The commentary to that section of Canon 4 states that "*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.*"

After reviewing your letter it is the opinion of the Commission that you do not have to voluntarily recuse yourself in matters involving the attorney. Your letter stated that you have no interest in the commercial building owned by your wife. Further, the attorney does not pay your wife any rent directly, but pays a sub-lessor of the building. The sub-lessor then pays your wife whatever rent she and that person have agreed to pursuant to the lease between them. She has no contact whatsoever with the attorney. This factual scenario presents no conflict at all on your behalf.

It should also be noted that Canon 3B(1) requires a judge to hear and decide matters assigned to the judge except those in which disqualification is required. In the matter which you have presented to the Commission, there does not appear to be any disqualification required on the face of the facts which you have set forth. It is hoped that this opinion fully addresses the question you have raised. If you have any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,



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

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