



JUDICIAL INVESTIGATION COMMISSION

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

September 2, 2003

Re: JIC Advisory Opinion 2003-10

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. You stated in that correspondence that the Administrative Office of the Supreme Court has approved the employment of a co-op student from the _____ County High School to work part-time in the Magistrate Clerk's office of _____ County, West Virginia. The co-op student would work approximately two to three hours per day, five days a week. You requested that Magistrate Court Clerk _____ interview the applicants and candidates for the position of co-op and provide you with her top three recommendations and choices. Since the co-op student would be working directly under Magistrate Clerk _____ and be under her direct supervision you felt that she should have some input into the selection of the individual. _____ first choice was her daughter, _____. You asked whether the appointment of the Magistrate Clerk's daughter by the Judge would constitute favoritism under the provisions of Canon 3C(4). You further asked whether the situation would create an appearance of impropriety under Canon 2. You stated that the three choices submitted by _____ appear to be all qualified and no one individual would stand out above the others.

To address the question which you have raised, the Commission reviewed Canon 3C(4) of the Code of Judicial Conduct. That Canon states in relevant part:

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

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C. Administrative responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

This Canon prohibits a judge from demonstrating favoritism in making an appointment. It also requires that any appointments made by a judge be done on the basis of merit. You stated in your letter that the three choices submitted by _____ appear to all be qualified and no one individual would stand out above the others. Based upon this information it is the opinion of the Commission that if you appointed the Magistrate Clerk's daughter to the position the Canon's prohibitions against favoritism would be breached. The candidates all appear to be equal so the appointment of the relative of the Clerk would give the appearance of favoritism. This opinion is consistent with prior opinions issued by the Commission. See, JIC Advisory Opinion 1/5/93; and JIC Advisory Opinion 7/5/94. You have been provided copies of those opinions previously.

If there is any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,



Fred L. Fox, II, Chairperson
Judicial Investigation Commission

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