



JUDICIAL INVESTIGATION COMMISSION

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

February 27, 2004

Re: JIC Advisory Opinion 2004-05

Dear Mental Hygiene Commissioner

You have recently asked for an advisory opinion from the Judicial Investigation Commission. In your request you stated that you had been contacted by a party seeking representation in the filing of a Petition asking to be appointed as Guardian and Conservator for a family member. The family member resides in the City of _____ County, West Virginia. You are a Mental Hygiene Commissioner for _____ County and as such have been appointed to act as a finder of fact for Guardianship and Conservator matters in _____ County. You have in the past acted as a Mental Hygiene Commissioner in mental hygiene matters in both _____ and _____ Counties at the request of the Circuit Judges for the _____ Judicial Circuit of West Virginia. You have never acted as finder of fact in a Conservatorship or Guardianship matter in either _____ or _____ Counties. You asked for an opinion regarding whether or not acting as an attorney for a Petitioner in a Conservator and Guardianship matter in _____ and/or _____ County or for that matter any other county in West Virginia, is or is not a violation of Canon 6C(2) of the Code of Judicial Conduct.

A review of the Canon which you have mentioned finds that it states in relevant part:

Canon 6. Application of the code of Judicial Conduct.

C. Continuing part-time judge. A continuing part-time judge:

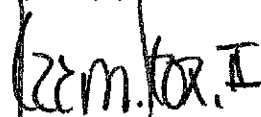
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(2) may practice law in the court on which the judge serves or in any other court subject to the appellate jurisdiction of the court on which the judge serves, but shall not act as a lawyer in a proceeding in which the judge has served as a judge in any other proceeding related thereto, or in any matter involving the same subject matter jurisdiction.

The commentary to this Canon states that a Mental Hygiene Commissioner shall not 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.

After reviewing your request and the relevant Canon, a majority of the Members of the Judicial Investigation Commission feel that you should not handle the matter as an attorney in Hancock County. Such conduct, a majority of the Commission feels, would violate the prohibition set forth in Canon 6C(2) and create, at least, the appearance of a conflict of interest. If you have any further question regarding this matter 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 written in a cursive, somewhat stylized script.

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF,II:nb