



## JUDICIAL INVESTIGATION COMMISSION

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February 18, 2005

Re: JIC Advisory Opinion 2005-03

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion regarding whether a Circuit Judge may hire as a Probation Officer a relative of the sixth degree. In your letter you asked whether you could hire a Probation Officer who is a cousin and a relative of the sixth degree, your common ancestors being great-grandparents. You further stated relevant portions of Canon 3C(4), which prohibits nepotism or favoritism in the selection of employees and W.Va. Code §62-12-5(d), which states that, "no judge may appoint any Probation Officer, Assistant Probation Officer or Clerical Assistant who is related to him or her by consanguinity or affinity."

After reviewing your correspondence the Commission considered your request at its last meeting. The Commission felt that the Canon which you cited from the Code of Judicial Conduct would permit the employment of the individual so long as the employment was based on merit and not nepotism or favoritism. However, the Commission felt that the statutory provision which you cited would prohibit your employment of the individual because he is related to you under the terms set forth in the statute. It is therefore, the opinion of the Commission that the statute would prohibit your employment of a Probation Officer who is a cousin and a relative of the sixth degree.

It is hope that this opinion fully addresses the questions which you have raised. 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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