



## **JUDICIAL INVESTIGATION COMMISSION**

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

September 12, 2005

Re: JIC Advisory Opinion 2005-18

Dear .

In a recent letter to counsel you asked for an advisory opinion. You stated in that letter that a circuit judge and an attorney who practices before him propose to join a fishing club located on a trout stream in a rural county. For ease of operation the club is organized as a nonprofit corporation. The judge and lawyer will each acquire stock in the corporation to participate. The judge and lawyer will be minority shareholders in the recreational venture. Once the transaction is completed there will be three or four stockholders in the corporation, with perhaps more to be added in the future. Because the corporation is not for profit, no rent, royalties or income of any kind will be generated by the organization, and no officer or stockholder will be paid a salary or fee. No financial benefit will be derived from the club that would operate between lawyer and judge. A yearly charge will be assessed to members for upkeep, taxes and maintenance of the property. It is not anticipated that the judge and lawyer will use the property at the same time. You asked whether Canon 4, or any other provision of the Code Judicial Conduct would operate to preclude the lawyer from appearing before the circuit judge.

To address the question which you have raised, the Commission has reviewed Canon 4 of the Code of Judicial Conduct. 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.

D. Financial activities. - (1) A judge shall not engage in financial and business dealings that:

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- (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 structure of the club which you describe in your correspondence and any relationship which you may with an attorney in that club does not fall within the language contained in Canon 4D. As you state in your correspondence the club is organized as a nonprofit corporation and each member will acquire stock in the corporation to participate. There will be no rent, royalties or income of any kind generated by the organization and no other officer or stockholder will be paid a salary or a fee. No financial benefit could be derived from the club that would operate between the lawyer or the judge. It is anticipated that the judge and lawyer will use the property at different times.

Because the club which you described in your correspondence and any relationship which may exist between a circuit judge and lawyer falls outside the language contained in Canon 4D, it is the opinion of the Commission that the judge would not be barred from participating in the club, nor would the lawyer or any member of his firm be precluded from appearing before the judge.

It is hoped that this opinion fully addresses the question which you have raised. If there is 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", written over a horizontal line.

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF,II:nb