



## JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629  
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April 10, 2006

Re: JIC Advisory Opinion 2006-04

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. In that letter you stated you are the Family Court Judge for \_\_\_\_\_ Counties. Your father's first cousin is \_\_\_\_\_ wife is \_\_\_\_\_. The relationship between you and \_\_\_\_\_ and \_\_\_\_\_ is not particularly close but has always been friendly. You have known these people all of your life. About 2-3 months ago you ran into \_\_\_\_\_ and \_\_\_\_\_ at a restaurant where you had an opportunity to talk and catch up. During your conversation you talked about her purse, which you were admiring.

On March 8, 2006, you conducted a hearing in a case styled \_\_\_\_\_. In the course of the proffer by \_\_\_\_\_ attorney, \_\_\_\_\_ was disclosed as a witness who was present to testify on that date. Upon inquiry you determined that it was the same \_\_\_\_\_ who is married to your father's first cousin. The relationship was disclosed and any potential conflict was waived by both parties. Although, \_\_\_\_\_ was in the waiting room to testify she was not called as a witness. Her testimony was proffered. You do not recall how \_\_\_\_\_ is related/associated with \_\_\_\_\_. She may be his aunt, you were not certain. You conducted the hearing. You had no idea if \_\_\_\_\_ will be called as a witness in this proceeding again. You believe it is worthy of noting that you have divorced these parties before (they remarried) and have conducted numerous proceedings involving them. You believe their divorce/custody proceeding is likely to be very protracted and difficult if the past is any indication.

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A few days after the hearing, [redacted] left a purse/bag for you at your mother's place of employment. You estimated the cost of the purse to be \$50.00. When you called her she explained that she had bought it for you but did not want you to think she was doing anything inappropriate so she waited until after the hearing to deliver it. You do not think [redacted] gave the gift to influence you in any way; otherwise she would not have waited until after the hearing to deliver it. You also saw her within a week of the hearing and she said nothing about the purse or the hearing. You had no idea she was a witness in the case until it was disclosed on March 8 in court. When you talked on the phone she did not discuss the pending case with you in anyway. You do not find her actions to be peculiar, nor do you believe they are related to the pending litigation at all.

You stated that as there will be more (probably many more) hearings in this case, you wondered how to proceed. In light of the litigious history the parties have, you do not want to do anything that may be perceived as unethical. There is a Motion to Withdraw as Counsel pending since [redacted] attorney seeks to be discharged. It makes sense to you to disclose the gift to the parties to see if either want you recused. However, it appears that one attorney is having a difficult time at best in communicating with her client, and you have not permitted her withdrawal yet. You are further concerned that you may be asked to take some form of immediate action in this case before the disclosure could be made. Finally, you asked if there is a request that you be recused, should you voluntarily recuse yourself or let the Supreme Court make the decision. You do not want to unnecessarily burden another judge in the case, but you do not want to take inappropriate action either.

At its recent meeting the Commission reviewed your letter and the history of the case as you set forth in your communication. To address the inquiry which you have made, the Commission reviewed Canon 1, Canon 2A and Canon 3E of the Code of Judicial Conduct. These Canons state in relevant part as follows:

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

- A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

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- A. A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in the manner that promotes public confidence in the integrity and impartiality of the judiciary.

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

- E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonable be questioned. . . .

After reviewing the information that you have provided and the relevant portions of the above stated Canons, it is the opinion of the Commission that you should recuse yourself from this proceeding. By doing so you will avoid the appearance of impropriety and fully comport to the standards set forth in the above stated sections of the Code of Judicial Conduct.

It is hoped this opinion fully addresses the question that 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 black ink, appearing to read "Fred L. Fox, II".

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF,II:nb