



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
Charleston, West Virginia 25326-1629
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Re: JIC Advisory Opinion 2006-05

13 April 2006

Dear

In a letter to the Judicial Investigation Commission you asked about two issues regarding disqualification of law clerks. The first issue you raised was addressed in an advisory opinion dated 28 February 2006, which you have received. The second issue which you raised in that correspondence involved the Judicial Investigation Commission's previous advisory opinion of 05 August 2002, wherein it was indicated that law clerks must be screened from working on cases of law firms with which the law clerk has interviewed for a job. You recognize that this is a clear-cut rule easily administered but stated that it can have a devastating impact on judges.

Circuit Court law clerk positions are relative low paying positions and were designed for one to two years duration for recent law school graduates. You have had five law clerks, two stayed two years, and three stayed one year. The position traditionally starts around August 1. The law clerks who stay one year usually send out resumes and begin interviewing for jobs in December or January, 5-6 months later. Although they may have been in their law clerk position for a relatively brief time, they must begin seeking a permanent position because they are competing with the next year's law students graduating in May.

You state that the Commission's present rule may work well in large urban areas, but it does not work well in smaller, more rural areas. Your present law clerk is a good example. He is a native of
He chose to be your law clerk in part so that he

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could observe the local firms since it has always been his desire and intent to practice law in He has identified some local law firms that may meet his employment goals. Unfortunately for you, once he interviews with a firm, he can no longer work with you on cases involving that firm. Local law firms have the vast majority of cases pending in your court. Your law clerk has been following the commission's guidelines set forth in its advisory opinion and he is not working on cases from the firms with which he has interviewed.

The practical problem for you is that there may, and probably will, come a time when there are only a very few cases in which your law clerk can assist you. In rural West Virginia many sons and daughters of local parents are the only law students who are interested in clerking in that area. You state that in your opinion interviewing for a position should not disqualify a law clerk. You feel that once a law clerk accepts a job at a particular law firm that clerk should not work on any more of that firm's cases. You asked the Commission to reconsider its prior advisory opinion in this area.

In its prior advisory opinion dealing with law clerks seeking employment, the Commission noted that there is a considerable amount of literature covering the general topic, but there are no clear definitions of perimeters within which a judge and present law clerk must perform while the law clerk is seeking employment. The standards vary in diverse jurisdictions.

The Code of Judicial Conduct places a responsibility on the judge to assure that a fair and impartial forum is afforded to litigants who appear before the judge. The Commission in its prior advisory opinion attempted to balance the ethical requirements set forth in the Code of Judicial Conduct with the courts need to continue to attract talented law graduates to serve in clerkship positions. The failure to establish some guidelines in this area might lead to possible violations of the Code of Judicial Conduct.

In reviewing your correspondence and the specific difficulties with the current guidelines, and in discussing this matter at length, with the participation of three circuit judges, the Commission has determined that you have, in fact, identified a very real problem. The Commission has, therefore, reconsidered and does herein, as follows, substantially amend its advisory opinion of 05 August 2002.

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Although the Commission still feels that the law clerk should keep the judge generally informed as to his/her employment search, that law clerk need only be screened from cases involving a law firm or lawyer with whom he/she has accepted an offer of employment.

It is hoped that this opinion fully addresses the issue which you have raised. If you have any further questions 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 stylized with a large, looped "F" and a distinct "II" at the end.

Fred L. Fox, II, Chairperson
Judicial Investigation Commission