



## **JUDICIAL INVESTIGATION COMMISSION**

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

June 6, 2006

Re: JIC Advisory Opinion 2006-07

Dear \_\_\_\_\_

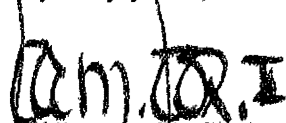
In a recent letter to Counsel to the Judicial Investigation Commission you asked for an advisory opinion. In that letter you stated that you were asking the opinion of the Commission on an issue that has developed in \_\_\_\_\_ County. Specifically, one of your probation officers recently married an assistant prosecuting attorney and you are concerned this might have created a conflict of interest. Presently the assistant prosecuting attorney is assigned to magistrate court so the contact with the probation officer is limited to preliminary probation revocation proceedings. However, during the course of these hearings the probation officer may be called as a witness and subsequently questioned by his/her spouse. Moreover, you asked what if, at some future time the assistant prosecuting attorney is assigned to the circuit court where the spouse probation officer is not only participating in revocation, but also providing impartial sentencing recommendations as part of the pre-sentence investigation report.

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In reviewing the inquiry which you have made, the Commission has discovered the employment of a probation officer who is married to an assistant prosecuting attorney in another county circuit. The terms of that employment were approved by the Administrative Office of the Supreme Court of Appeals based upon the condition that the probation officer and her husband who was an assistant prosecuting attorney would have no professional contact as it would relate to the assistant prosecuting attorney representing the state in any action against any person assigned to the probation officer at a pre-supervision or supervision status. While the situation you describe in your county does present some inherent dangers because there would be a clear conflict of interest if the assistant prosecuting attorney and his/her spouse probation officer had any contact on any case, that conflict may be overcome if the conditions imposed in the other circuit are imposed in your county. Care should also be taken to assure that the public does not get the false sense that the probation officer and the assistant prosecuting attorney are having professional contact in any cases.

It is hoped this opinion fully addresses the question which you have raised. If there 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", is written over a circular official stamp.

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF,II:nb