



## **JUDICIAL INVESTIGATION COMMISSION**

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

August 9, 2006

Re: JIC Advisory Opinion 2006-09

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. In that correspondence you stated that you have been appointed as Judge of the Circuit Family Court. You were employed by a nonprofit legal services agency that represents children in both circuit court and family court. Employees of that agency regularly were appointed by the family court judge to serve as custody evaluator, guardian-ad-litem or attorney for the child pursuant to West Virginia Code §48-9-301 & 302. You asked as a Family Court Judge whether you would be precluded from appointing the attorneys who work for your former employer to represent children pursuant to the referenced West Virginia Code sections.

To address the question which you have raised, the Commission has reviewed Canon 3C(4) of the Code of Judicial Conduct. That Canon states in relevant part:

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

C. Administrative responsibilities. (4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

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Based upon the language contained in that Canon, it is the opinion of the Commission that you could appoint attorneys who work for your former employer to represent children pursuant to the referenced West Virginia Code sections. You would need to do so based on a fair and equal system allowing access to all attorneys who practice before you and who wish to serve in those roles to be appointed. As long as you made the appointments under such system and within the confines of the language contained in Canon 3C(4) of the Code of Judicial Conduct you would not be precluded from appointing attorneys of your former employer.

It is hoped that this opinion fully addresses the question which you have raised. If you have 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". The signature is stylized with a large, bold "F" and "L", and a smaller "Fox, II" following it.

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF,II:nb