



## **JUDICIAL INVESTIGATION COMMISSION**

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

February 12, 2007

Re: JIC Advisory Opinion 2007-02

Dear Judge

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion on the following issues: 1) Whether it is a violation of the Judicial Canons of Ethics for a judge or a member of the judge's staff to speak with an attorney in a case ex parte in order to provide the attorney with a date for a hearing (without discussing any merits of the motion other than how long the party will need for the hearing and type of hearing); 2) whether it is a violation of the Code of Judicial Canons of Ethics for a judge or the judge's staff to contact an attorney or the attorney's staff member ex parte to advise them that a hearing has been canceled or continued (without discussing the merits of the case); 3) whether it is a violation of the Judicial Canons of Ethics for a judge or a member of the judge's staff to make an ex parte inquiry with an attorney to a case as to whether mediation took place and whether the matter was resolved or not resolved (without discussing what took place at the ordered mediation or discussing the merits of the case).

To address the questions which you have raised the Commission has reviewed Canon 3 of the Code of Judicial Conduct which states in relevant part:

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

B. Adjudicative responsibilities.

- (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:
  - (a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized: provided:
    - (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
    - (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.
  - (b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.
  - (c) A judge may consult with court personnel whose functions include aiding the judge in carrying out the judge's adjudicative responsibilities or with other judges.
  - (d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
  - (e) A judge may initiate or consider any ex parte communications when authorized by law.

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After reviewing Canon 3B(7) it is the opinion of the Commission that the language contained in the Canon is specific in addressing the three issues 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, prominent "F" and "L".

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF,II:nb