



JUDICIAL INVESTIGATION COMMISSION

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

March 26, 2007

Re: JIC Advisory Opinion 2007-05

Dear Magistrate

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. In that correspondence you stated that you have been a Magistrate in _____ County for the past 26 years. Your assistant is retiring effective April 30, 2007, after 11 years of service. You stated that the position is a will and pleasure position in your office and you wanted to hire _____, who is your son-in-law. You checked with your chief judge and his opinion was that this should not be a problem.

You stated that _____ is well qualified for the position. His past employment record includes all types of office skills including computer. He can work well with others and can meet and converse with the public. He is willing to learn all the job requires. He has sold real estate for several years, has worked in an insurance office doing clerical work, has been a studio manager/marketing director, and public relations manager for 22 Burger Kings.

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

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

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C. Administrative responsibilities.

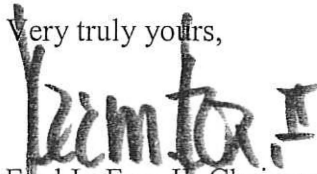
(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

"Nepotism" is defined in the terminology section of the Code of Judicial Conduct as favoritism shown in the treatment of a member of the judge's family or a person living in the judge's household. "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship. Based upon the definitions provided, a son-in-law would fall within a member of the judge's family as set forth in the Code.

Reading Canon 3C(4) of the Code of Judicial Conduct and reviewing the definition of "nepotism" as set forth in the terminology section of the Canon, it is the opinion of the Judicial Investigation Commission that Canon 3C(4) of the Code of Judicial Conduct would be violated by you if you did employ him. You should not hire your son-in-law as your magistrate assistant. (See also, JIC advisory opinion 1/5/93, which is enclosed for your review).

If you have 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". The signature is stylized with a large, prominent "F" and "L".

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF,II:nb