



JUDICIAL INVESTIGATION COMMISSION

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

April 30, 2007

Re: JIC Advisory Opinion 2007-07

Dear ,

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. In your correspondence you stated that there is a chance one of your magistrates may retire and/or take disability. An individual who was interested in being appointed to/or running for election to that office has contacted your daughter to determine if she is interested in serving as his assistant. Your daughter currently works for the individual who is employed by the Police Department. The conversations regarding your daughter working for this individual have not included you. Your daughter approached you recently to inquire if her working for a magistrate would create an ethical problem for her or for you.

You stated that a magistrate assistant is an employee of the West Virginia Supreme Court of Appeals. The chief judge of a circuit, in this case, the Judicial Circuit has some administrative responsibilities with regard to the magistrates and their assistants. You believe that the administrative responsibilities do not (emphasis in original) include the right to hire and/or fire an assistant to a magistrate. There could be an instance where a chief judge would have to become involved in a disciplinary matter involving a magistrate assistant.

You stated that it was your position that you had nothing to do with promoting your daughter as a potential magistrate assistant and would, by order, recuse yourself from any employment situation involving her. It is your opinion that it would be a relative easy matter, by agreement with the other judges in the circuit, to prevent you being involved in matter dealing with your daughter's employment or potential employment with the West Virginia Supreme Court of Appeals as a magistrate assistant.

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You requested the Commission to advise you if there were any potential ethical problems for you or your daughter if she were employed as a magistrate assistant and further, could any potential issues relating to her employment status be managed by an administrative order which would prevent you from being involved in any issues related to her employment.

To address the question which you have raised, the Commission reviewed Canon 3 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.

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. . . .

This section of Canon 3 applies to a judge who is making appointments or employing individuals. The information which you have provided the Commission indicates that you are not making the appointment of the magistrate's assistant nor are you involved in appointing the individual whom you believe wants to be magistrate. The employment of your daughter would reside with the individual who is appointed magistrate and her position would be a will and pleasure employment for the magistrate.

The only possibility of conflict might arise if you were chief circuit judge and as part of your administrative responsibilities to the magistrate court an issue arose which involved your daughter. You have indicated clearly that this conflict could be handled by an administrative order that would refer any such matter to another judge to handle. You would have the ability to remain isolated from any such case.

Based upon the language contained in the Code of Judicial Conduct and the information which you have provided to the Commission, there does not appear to be a conflict on your part if your daughter were to become a magistrate assistant. You should take care to observe those safeguards which you have set forth in your letter in the event that a situation involving your daughter arose while you were chief circuit judge and responsible for the administration of the magistrate court.

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It is hoped that this opinion fully addresses the question which you have raised. If there is any further question regarding this matter do not hesitate to contact this office.

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