



JUDICIAL INVESTIGATION COMMISSION

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

May 21, 2007

Re: JIC Advisory Opinions 2007-08

Dear Commissioner

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. In your letter you stated that you had a situation arise in your practice regarding your position as a part-time Mental Hygiene Commissioner for _____ County West Virginia and a criminal case to which the Circuit Judge has appointed you. You contacted the State Bar Office advising the State Bar Counsel that you had been appointed in a criminal case to a Defendant who you subsequently learned was the Respondent in an involuntary commit case where you sit as Mental Hygiene Commissioner. After resolving the issue concerning the potential conflict in representation, you were informed that as a Mental Hygiene Commissioner there was a possibility that you were prohibited from representing criminal defendants because of the potential violation of the Canons of Judicial Conduct. You were requested by State Bar Counsel to contact this office regarding the representation of criminal defendants, including indigent criminal defendants to whom you have been appointed and the potential for any problems since you are also a Mental Hygiene Commissioner.

You asked for an advisory opinion regarding this situation and you stated that in your area of the State there is no Public Defender and many of the Attorneys including the part-time Mental Hygiene Commissioners do appointed criminal work and/or also serve as guardians ad litem in abuse and neglect cases.

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To address the inquiry which you have made the Commissioner has reviewed Canon 6 of the Code of Judicial Conduct. Under Canon 6 you serve as a Mental Hygiene Commissioner, which is a continuing part-time judge. Canon 6C exempts Mental Hygiene Commissioners from having to comply with several of the Canons in the Code of Judicial Conduct. Canon 6C(2) states:

C. Continuing part-time judge. A continuing part-time judge:

(2) may practice law in the court in which the judge serves or in any court subject to the appellate jurisdiction of the court in which the judge serves, but shall not act as a lawyer in a proceeding in which the judge has served as a judge in any other proceeding related thereto, or in any matter involving the same subject-matter jurisdiction.

The commentary to Canon 6C states in relevant part. . .[n]or shall a Mental Hygiene Commissioner accept any mental hygiene matters or serve as an attorney in any proceeding related to a case in which he or she has served as a Mental Hygiene Commissioner. . .”

Based on the language contained in the Canon and the commentary to the Canon, it is the opinion of the Commission that you can accept court appointed cases in which you represent criminal defendants. You could not, however, represent any individual who has appeared before you in your capacity as Mental Hygiene Commissioner.

It is hoped that this fully addresses the question that 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