



JUDICIAL INVESTIGATION COMMISSION

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June 26, 2007

Re: JIC Advisory Opinion 2007-14

Dear

In a letter to the Judicial Investigation Commission you asked for an advisory opinion. In that letter you stated that you received a call from a Family Court Judge in your judicial circuit who had voluntarily recused himself from a domestic violence case, where the respondent in the case had been the subject of a criminal prosecution in County Circuit Court almost ten years ago when the Family Court Judge was then serving as Prosecuting Attorney. You were told that automatic recusal was required by this judge even though the current case before the Family Court Judge did not involve or arise from or relate in any way to the facts and circumstances presented in the prior criminal case. Further, in speaking to the Family Court Judge, it is your opinion that he would otherwise be totally fair and impartial in hearing the domestic violence case.

You stated that you had done some research on this matter but did not find any clear authority to address the question which you raised. You indicated that if the Family Court Judge was right in his assessment of the recusal issue, you had served in several cases inappropriately. You were a Prosecutor for years and many people who had been previously prosecuted make their way before you in other criminal or civil cases.

Your question asks whether you would be disqualified in all cases of an individual who may have had a case pending while you were prosecuting attorney. To address the question which you have raised, the Commission has reviewed Canon 3 of the Code of Judicial Conduct. Canon 3 states in relevant part:

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

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E. Disqualification. – (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

- (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

...

Based upon this language contained in Canon 3, it is the opinion of the Commission that you would be disqualified in only those cases which were pending while you were Prosecuting Attorney. Any subsequent cases brought after you left the Prosecuting Attorneys Office you could preside over, even if the same individual who had a previous case pending while you were a Prosecuting Attorney may be involved in the subsequent case.

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 the Commission.

Very truly yours,



Fred L. Fox, II, Chairperson
Judicial Investigation Commission

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