



## **JUDICIAL INVESTIGATION COMMISSION**

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

August 27, 2007

Re: JIC Advisory Opinion 2007-21

Dear :

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion regarding two issues: (1) If you run for Circuit Court Judge, Family Court Judge or Prosecuting Attorney, will you need to resign your position as Mental Hygiene Commissioner; (2) if you accept an Assistant Prosecuting Attorney position will you have to resign as Mental Hygiene Commissioner?

To address the issues which you have raised, the Commission has reviewed Canon 5 of the Code of Judicial Conduct. Canon 5 states in relevant part:

Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity.

- (2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

Based upon the language contained in this Section of Canon 5, if you were to run for Circuit Court Judge or Family Court Judge you would not need to resign your position as Mental Hygiene Commissioner. If you were to run for Prosecuting Attorney you would need to resign your position as Mental Hygiene Commissioner.

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It is the opinion of the Commission that you would also need to resign your position as Mental Hygiene Commissioner if you were to accept an Assistant Prosecuting Attorney position. As a judicial officer you would not be allowed to simultaneously hold a position in the prosecuting attorney's office.

It is hoped that this opinion fully addresses the questions 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 "F" and "L", and a distinct "II" at the end.

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF,II:nb