



JUDICIAL INVESTIGATION COMMISSION

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

October 31, 2007

Re: JIC Advisory Opinion 2007-23

Dear

In a recent letter to the Commission you asked for an advisory opinion. You stated that you are a Family Court Judge from the _____ which covers _____ and _____ Counties. You are currently covering _____ and _____ Counties. Your brother is involved in a divorce action in _____ County in which you have voluntarily recused yourself and it is being heard by another Family Court Judge. Your brother is represented by an attorney in his divorce action. You are not anticipating being a witness in the case. You have recently been asked to recuse yourself in another divorce action in which your brother's attorney is counsel for one of the parties. This recusal motion was based on the fact that he represents your brother. You asked for an advisory opinion as to whether or not you should recuse yourself.

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

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

E. Disqualification. – (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . .

October 31, 2007

Page Two

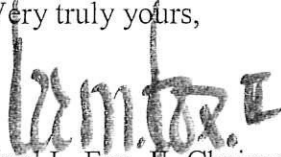
The commentary for this section of Canon 3 states that "[a] judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

Canon 3 also states specific instances in which a judge is qualified per se. These instances include when the judge or the judge's spouse or a person within the third degree of relationship to either of them is a party to the proceeding; is acting as a lawyer in the proceeding; is known by the judge to have more than de minimis interest in that could be substantially affected by the proceeding; is to the judge's knowledge likely to be a material witness in the proceeding. None of these per se disqualification factors are present in your brother's situation as you described it in your letter.

It is the opinion of the Commission that you do not have to disqualify or recuse yourself from the divorce action in which your brother's lawyer is counsel for one of the parties. You should disclose on the record, however, the relationship this attorney currently has with your brother when this attorney appears before you representing one of the parties.

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,

A handwritten signature in dark ink, appearing to read "Fred L. Fox, II", with a stylized flourish at the end.

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF,II:nb