



JUDICIAL INVESTIGATION COMMISSION

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November 6, 2007

Re: JIC Advisory Opinion 2007-25

Dear

You have recently asked for an advisory opinion from the Judicial Investigation Commission. In that request you stated that up until just recently there were you and two other Mental Hygiene Commissioners serving in County. Now you have four Commissioners. In County the Circuit Judge does all of the conservator guardianship proceedings. The Mental Hygiene Commissioners do not hold hearings on any of those proceedings. You asked whether Mental Hygiene Commissioners can appear as attorneys representing individuals in conservatory guardianship proceedings before the local Circuit Court Judge.

To address the question which you have raised, the Commission has reviewed the Code of Judicial Conduct and relevant sections of the W.Va. Code. Canon 6C of the Code of Judicial Conduct states in relevant part:

Canon 6 – Application of the Code of Judicial Conduct.

- C. Continuing part-time judge. – A continuing part-time judge:
(2) may practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on 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 this Canon states in relevant part:

“[a] part-time Mental Hygiene Commissioner [may not] 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 . . .”

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W.Va. Code §44A-2-1(b) provides that the circuit court shall have exclusive jurisdiction in conservator and guardianship proceedings. §44A-2-9(a) provides that the court may hear the petition for the appointment of a guardian or conservator or may designate a mental hygiene commissioner in the circuit to serve as trier of fact at the hearing on the petition provided that the court shall be trier of fact at the hearing on a petition for the appointment of a conservator for a missing person. If a mental hygiene commissioner is appointed, a mental hygiene commitment proceeding may not be held simultaneously with a proceeding for the appointment of a guardian or conservator. The designated mental hygiene commissioner shall submit written findings of fact and recommendations to the court upon conclusion of the hearing. The court may accept or reject the recommendations of the mental hygiene commissioner. Only the court may enter an order appointing a guardian or conservator.

It is clear from the information that you have provided to the Commission that in your county only the Circuit Judge hears conservator and guardianship proceedings. Since the Circuit Judge only conducts the conservator and guardianship hearings in your county mental hygiene commissioners could represent individuals in those proceedings. In the event that an individual involved in the conservator and guardianship proceeding subsequently appeared before you as a Mental Hygiene Commissioner who had been involved in the proceeding representing an individual, you must recuse yourself from the mental hygiene matter.

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". The signature is stylized with a large, prominent "F" and "L".

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF,II:nb