

JUDICIAL INVESTIGATION COMMISSION

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

December 21, 2007

Re: JIC Advisory Opinion 2007-28

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. You stated in that letter that you and your law partner have served as Mental Hygiene Commissioners for County for several years. In January 2008 you intend to file the necessary application to run for the Office of Prosecuting Attorney of County. You asked whether you and your law partner could continue serving as Mental Hygiene Commissioners once you file pre-candidacy papers and throughout the election. You asked if you were to become an Assistant Prosecuting Attorney during 2008 and before the election process was completed whether your law partner would be able to continue as a Mental Hygiene Commissioner. You stated as a part-time prosecutor you could maintain a private law practice and you assume that if you attempted to do so with your law partner while serving as an Assistant Prosecuting Attorney he could no longer serve as a Mental Hygiene Commissioner. And you asked whether while you were still a private attorney and running for the office of Prosecuting Attorney and not serving as an Assistant Prosecuting Attorney could your law partner serve as the Treasurer for your campaign and could both of you or either of you continue to serve as Mental Hygiene Commissioners.

To address the questions which you have raised the Commission has reviewed Canon 5 and Canon 6 of the Code of Judicial Conduct. Canon 6 of the Code defines the position of Mental Hygiene Commissioner as a "continuing part-time judge." As a continuing part-time judge you and your law partner are not required to comply at any time with Canon 5A(1) of the Code of Judicial Conduct.

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Canon 5 governs the political conduct of judicial officers and/or judicial candidates. That Canon states in relevant part:

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

- A. All judges and candidates. (1) Except as authorized in Sections 5B(2), 5C(1), and 5C(3), a judge or a candidate for election or appointment to judicial office shall not:
- (a) act as a leader or hold an office in a political organization;
 - (b) publicly endorse or publicly oppose another candidate for public office;
 - (c) make speeches on behalf of a political organization;
 - (d) publicly display any campaign paraphernalia in any area where judicial activities are conducted or knowingly permit any such display;
 - (e) solicit funds for a political organization or candidate.

Canon 5A(2) states that "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 the judge may continue 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."

Canon 5A(2) would require that you resign your position as a Mental Hygiene Commissioner when you become a candidate for the non-judicial office of Prosecuting Attorney for _____ County. Your law partner could continue to serve as a Mental Hygiene Commissioner even if you were to become an Assistant Prosecuting Attorney during 2008 before the election process is completed. He could also continue to serve as a Mental Hygiene Commissioner if you became a part-time Prosecutor and maintained your law practice with him. The Commission could find no statutory requirement that the Prosecuting Attorney's Office be involved in Mental Hygiene Commission proceedings.

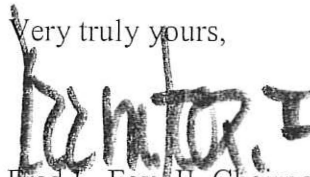
As a Mental Hygiene Commissioner, your law partner is not required to comply with Canon 5A(1) which places certain restrictions on political involvement by judges and judicial candidates. Since he is not required to comply with the restrictions set forth in that Section of Canon 5, he could serve as the Treasurer for your campaign while continuing to serve as a Mental Hygiene Commissioner.

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It is hoped that this opinion fully addresses the questions which you have raised. If you have 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