



JUDICIAL INVESTIGATION COMMISSION

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

May 12, 2008

Re: JIC Advisory Opinion 2008-06

Dear

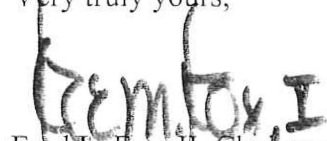
In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. You asked whether you could preside in "*The Associated Press v. Steven D. Canterbury, Administrator of the West Virginia Supreme Court of Appeals*." You indicated that you are regularly in contact with the Court and its administrative office. You stated that you had to be in touch with them this week concerning an issue related to your court reporter. You asked whether you, or for that matter, any Circuit Court Judge could preside in this case in light of a possible conflict of interest and /or appearance of conflict of interest.

The Commission has reviewed Canon 3E of the Code of Judicial Conduct to address the question which you have raised. Canon 3E deals with the disqualification of a judge and when such disqualification is required. It sets forth specific grounds under which a judge must disqualify himself/herself from a proceeding and it lists other criteria which would require the judge to make a subjective determination about whether the judge could rule in a matter without bias or prejudice for or against a party. The Commission does not believe any of the criteria set forth in Canon 3E would require you to disqualify yourself from hearing the case. Most of the Commission Members who responded to your request feel that you are not disqualified from sitting on this matter and could do so without violating any of the Canons of the Code of Judicial Conduct. A minority of the Commission feels that even if you were disqualified from sitting on the case the rule of necessity principle would be invoked and you would be permitted to hear the matter. See, State ex rel. Brown v. Dietrick, 191 W.Va. 169, 444 S.E.2d 47 (1994).

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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:nb