



JUDICIAL INVESTIGATION COMMISSION

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

June 12, 2008

Re: JIC Advisory Opinion 2008-09

Dear

Your request for an advisory opinion was reviewed by the Commission at its meeting on May 30, 2008. In that letter you stated that you are currently the Family Court Judge in _____ and _____ Counties. On January 1, 2009, you will become the Circuit Court Judge of _____ County. You indicate that you have personal friends (attorneys) who practice before you in Family Court and who will also practice before you in Circuit Court. Your husband and you intend to vacation with one of these attorneys, _____ and his wife in July. You indicate that _____ was also your campaign manager and that you routinely disclose this fact in court when he or the other attorney in his office appears before you in family court. You asked whether after the vacation, what disclosure if any, must be provided when this attorney appears in your court. If a disclosure is required what is the appropriate length of time for the disclosure to last.

To review the question which you have raised, the Commission has looked at Canon 3E of the Code of Judicial Conduct. That Canon states in relative 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 . . .

June 12, 2008

Page Two

The commentary to 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." The Canon further states that disqualification is required if "the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding."

Based upon the language contained in the relevant sections of Canon E and the commentary, the Commission felt that you should disclose the social relationship you and your husband have with the attorney who practices in front of you in court. The disclosure should be ongoing. The attorneys and/or parties in the action would have an opportunity based upon the disclosure to move for your recusal. The Commission further felt that any situation in which you would have a personal bias or prejudice because of the social relationship would require your recusal so that a special judge could be assigned to hear that particular case.

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, bold "F" and "L".

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF:nb