



JUDICIAL INVESTIGATION COMMISSION

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

June 17, 2008

Re: JIC Advisory Opinion 2008-10

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion regarding conflict with your private practice association of a part-time prosecutor and your duties as a Mental Hygiene Commissioner. You stated in the letter that you serve as a Mental Hygiene Commissioner in the Judicial Circuit) and you have an associate, who has been appointed interim Prosecuting Attorney for County. He has been an associate in your law office for nearly three years and he will continue to have a private practice while serving as the prosecuting attorney. The Prosecuting Attorney position is part-time.

You indicate that you have a very limited number of mental hygiene hearings (in ten years the prosecuting attorney only appeared before you three times all at your request due to repeated petitions and limited time-frame or potential for criminal charges to be needed instead of involuntary commitment). Your biggest concern since it is the highest volume of work for you in are the guardian/conservator hearings which average 15 per year and have been running approximately 80% filed by the West Virginia DHHR with about 75% being where the DHHR and County Sheriff end up as the appointees. In the same ten years the prosecuting attorney only appeared at one hearing for the DHHR and that was to request leave not to be present. You indicate that you are aware that there would be no issue if you would resign as Mental Hygiene Commissioner or if left the firm but you would like to see if there is any way he could do his elected job and you could do your appointed job and still keep the law firm intact.

To address the question which you have raised, the Commission has reviewed Canon 3 of

the Code of Judicial Conduct. Canon 3 states in relevant part:

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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, including but not limited to instances where:

(b) the judge served as a lawyer in the matter in the controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it; . . .

Based upon the language contained in the relevant section of Canon 3, it is the opinion of the Commission that you could not continue your association with _____ now that he is working in the Prosecuting Attorney's Office and remain as a Mental Hygiene Commissioner in the _____ Judicial Circuit. Either he or you could resign the positions and keep the legal association intact or you and he could continue in your positions as Mental Hygiene Commissioner and Prosecuting Attorney and sever the legal association.

It is hoped that this opinion fully addresses 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