



JUDICIAL INVESTIGATION COMMISSION

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

October 20, 2008

Re: JIC Advisory Opinion 200813

Dear

In a letter to the Judicial Investigation Commission you asked for an advisory opinion. You stated that you are currently a magistrate appointed by Chief Judge to fill an unexpired term in County. You have been nominated in the Democratic Primary Election and will be running for that position in November. When you were appointed you obtained the services of the existing magistrate assistant. If you are elected, however, she has indicated that she will be retiring. You have been interviewing various candidates who have expressed an interest in the job. Based on the merits of the application the candidate you would like to employ is your niece. You asked for an advisory opinion regarding the employment of your niece as your magistrate assistant and whether it would violate any of the Canons of Code of Judicial Conduct.

To address the question which you have raised, the Commission has reviewed Canon 3 of the Code of Judicial Conduct which states in relevant part:

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

C. Administrative responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism.. . .

October 20, 2008

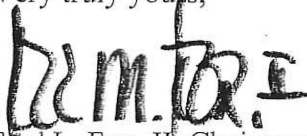
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"Nepotism" is defined in the terminology section of the Code of Judicial Conduct as favoritism shown in the treatment of a member of the judge's family or a person living in the judge's household. "Member of the judge's family" denotes a spouse, child grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See, JIC Advisory Opinions 3/26/07; 9/2/03; 1/5/93.

Based upon the language contained in the Canon and the definitions provided in the terminology section of the Code, it is the opinion of the Commission that you should not employ your niece as your magistrate assistant. Such employment could constitute a violation of the prohibition against nepotism as set forth in the Canon and at a minimum create an appearance that favoritism was involved in your selection.

It is hoped that this opinion fully answers 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", and a smaller "Fox, II" following it.

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF:nb