



JUDICIAL INVESTIGATION COMMISSION

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

November 25, 2008

Re: JIC Advisory Opinion 2008-15

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion regarding certain questions about winding down cases in order to begin your new position as a circuit judge. You asked whether you could remain in a federal case for the sole purpose of winding it down and transferring it to new counsel after January 1, 2009. You also asked whether you could prepare a fee affidavit after January 1, 2009 to document legal work and fees earned prior to December 31, 2008.

To address the questions which you have raised the Commission has reviewed Canon 4 of the Code of Judicial Conduct. Canon 4G states:

Canon 4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

G. Practice of law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

In your correspondence you indicate that the federal case about which you are inquiring pertained to an appeal to the United States Court of Appeals for the Fourth Circuit. It is scheduled for oral argument on December 2. You represent the appellant/plaintiff and the Federal District Court granted summary judgement for the defendants. You state that if the Fourth Circuit upholds the District Court then there would be nothing more for you to do on the case. Based upon the language set forth in Canon 4G, it is the opinion of the Commission that you should line up other counsel and otherwise remove yourself from that case entirely prior to January 1, 2009, when you will assume your duties as Circuit Judge.

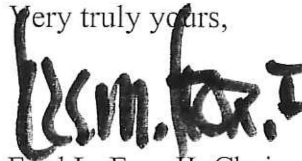
November 25, 2008

Page Two

You further indicate in your correspondence that you are involved in four cases pending in the federal court and one case pending in the state court involving fee-shifting statutes where fees may be awarded by the court if the plaintiff whom you represent prevails. You will transfer those cases to new counsel who will enter their appearance and take them over prior to January 1, 2009. However, you would like to be able to prepare fee affidavits after January 1, 2009, to show the work you have done in the cases and fees you have earned up to December 31, 2008. Since the fees are not awarded in these cases unless the plaintiff ultimately prevails you do not want to be burdened with extra work prior December 31, 2008, when you need to be winding down other cases. It is the opinion of the Commission that you could prepare fee petitions and other affidavits to support the work you have done prior to December 31, 2008, so that you could be compensated for the work you engaged in prior to that date. You could prepare these petitions and other support documents after January 1, 2009.

It is hoped that this opinion fully addresses the question which you have raised. If you have any other question regarding this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in black 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