



JUDICIAL INVESTIGATION COMMISSION

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

February 5, 2009

Re: JIC Opinion 2009-01

Dear Judge

Your recent request for an advisory opinion has been reviewed by the Judicial Investigation Commission. You stated that upon reviewing your upcoming juvenile abuse and neglect docket it came to your attention that you previously represented a respondent father who is now a party to a matter pending before your court. You were counsel for the respondent father in an abuse and neglect proceeding in 2001 in which only one child was involved in the petition. The matter pertained to a juvenile who is not a party to the case now pending before your court. The respondent father voluntarily relinquished his parental rights to the child in the abuse and neglect proceeding in which you represented him. The newest petition involves the respondent father's children from subsequent relationships. At this point the matter is in permanent placement review status on a 90-day review schedule. The respondent parents are no longer involved in the case as their respective parental rights were terminated by an August 2002 order of this court. You asked whether your prior representation of the respondent father in a previous abuse and neglect matter requires your recusal in the matters currently pending before your court.

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

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

February 5, 2009

Page Two

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:

- (a) 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;
- (b) the judge served as a lawyer in the matter in 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; . . .

The case which you describe in your correspondence does not fall within the ambient of either of these sections of Canon 3E. The case concerns a new issue involving new parties, none of which involved you in your representation of the respondent father. For these reasons the Commissions could find nothing that would require your recusal in the matters currently pending before your court. It is hoped that this opinion fully addresses the questions 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