



## 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 2009-03

Dear Judge

In a letter to the Judicial Investigation Commission you asked for an advisory opinion. You stated that you owned one rental unit and one-half undivided interest in two other rental units. The units are located in or about \_\_\_\_\_ West Virginia. The unit you own outright sits adjacent to your residence and is currently unoccupied. You expect to lease the unit sometime in or about January 2009. You receive 100% of the rental proceeds from that unit.

Of the other two rental units owned jointly in undivided one-half interests by \_\_\_\_\_ and you, one is currently occupied. The other suffers from serious structural issues and you do not anticipate it being occupied in the near future as you do not believe the relative rental values would make salvage of the property economically feasible at this time. You divide equally the net proceeds from rents paid on these units with \_\_\_\_\_ on a monthly basis.

In addition, a family member has been in periodic negotiations to acquire another series of rental units located in or about \_\_\_\_\_ County, West Virginia. When you wrote for an advisory opinion no agreement had been reached and no active negotiations had occurred in several months. If, however, agreement were reached, you would likely own an interest in those units and would seek approval from the Commission before committing to any agreement.

You ask for approval of the extra-judicial activities as in accord with Canon 4 of the Code of Judicial Conduct.

To address the issues which you have raised the Commission has reviewed Canon 4.

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That Canon states in relevant part:

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

D. Financial activities. (1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

The Commission also reviewed Matter of Means, 192 W.Va. 380, 452 S.E.2d 696 (1994) in which our Supreme Court held that joint ownership of a land holding corporation by an attorney and a family law master, whose home was on the property owned by the corporation was an impermissible financial and business interest and the master should have recused himself from the attorney's cases.

The ownership of rental property by you would be appropriate so long as the ownership complies with the language set forth in Canon 4D of the Code of Judicial Conduct and the holding of the Supreme Court in Matter of Means, supra. You would not be allowed to engage in a financial or business deals which involves you in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which you serve.

It is hoped that this opinion fully addresses the issues which you have raised. If there is any further question regarding these matters do not hesitate 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, looped "F" and a distinct "II" at the end.

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF:nb