



JUDICIAL INVESTIGATION COMMISSION

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

February 12, 2009

Re: JIC Advisory Opinion 2009-04

Dear

The Judicial Investigation Commission has recently received a request for an advisory opinion. The request covers two issues. You asked whether a juvenile referee who is acting in the capacity as a juvenile drug court judge can be a member of the board of directors for a nonprofit charitable corporation whose purpose is to operate a drug testing laboratory for the benefit of drug and other treatment courts across the State of West Virginia. The nonprofit drug testing laboratory will provide drug testing for adult drug courts in West Virginia and various outside agencies and businesses but is not currently providing testing services to the juvenile drug court in which the referee presides and is willing not to do so if necessary during the referee's tenure as a member of the board of directors. You stated that juvenile cases before the referee would not pertain to the operations of the nonprofit charitable corporation. The juvenile referee would neither engage in solicitation of funds nor use or permit the use of his judicial office for fund-raising purposes by the nonprofit charitable corporation.

The second issue which you raise asks whether a court employee who is not a judicial officer such as, a court administrator, may serve on the board of directors of such nonprofit charitable corporations.

To address the issues which you have raised, the Commission has reviewed Canon 4 and Canon 6 of the Code of Judicial Conduct. Canon 6 states:

Canon 6. Application of the Code of Judicial Conduct.

A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including but not limited to Justices of the Supreme Court of Appeals, Circuit Judges, Family Law Masters, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Masters, is a judge within the meaning of the code. All judges shall comply with this Code except as provided below. . .

February 12, 2009

Page Two

Under Canon 6 a Juvenile Referee is defined as a continuing part-time judge. While a continuing part-time judge is not required to comply with various provisions of the Code of Judicial Conduct that are set forth more fully in Canon 6C, a juvenile referee is required to comply with Canon 4C.

Canon 4C 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.

C. Governmental, civic, or charitable activities.

(3) Civic and charitable activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or non-legal adviser of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members subject to the following limitations:

(a) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

Based upon the language contained in these relevant parts of the Code of Judicial Conduct, it is the opinion of the Commission that a juvenile referee should not be a member of the board of directors for a nonprofit charitable corporation whose purpose is to operate a drug testing laboratory for the benefit of drug and other treatment courts across the State of West Virginia.

On the second issue as to whether the Court Administrator may serve on the board of directors for such a nonprofit charitable corporation, the Commission feels that the Administrative Director should not serve since an appearance of impropriety could be created. A minority of the members felt the Court should address that issue.

February 12, 2009
Page Three

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 black ink, appearing to read "Fred L. Fox, II". The signature is stylized with a large, bold "F" and "L" and a cursive "Fox".

Fred L. Fox, II, Chairperson
Judicial Investigation Commission