



## JUDICIAL INVESTIGATION COMMISSION

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

February 17, 2009

Re: JIC Advisory Opinion 2009-05

Dear Judge

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. You stated that you became Circuit Judge for [redacted] on January 1, 2009. In October 2008, [redacted] was indicted for Bribery/False Claims/Conspiracy. On January 14, 2009, you conducted a hearing to review this case and set it for trial. At that time, you disclosed that [redacted] and her family campaigned for you as you campaigned for Circuit Judge in 2008. There were no objections to you hearing the case. However, you pointed out to the Prosecuting Attorney that the same family campaigned for him at the same time. You asked whether a conflict exists which may be waived by the Prosecuting Attorney and whether you should continue on the case.

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

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

E. Disqualification. - (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . .

The commentary to the Canon states that "A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

February 17, 2009

Page Two

Based upon the language contained in the Canon and the following commentary, it is the opinion of the Commission that you properly handled the situation by disclosing the fact that and her family campaigned for you when you campaigned for Circuit Judge in 2008. This afforded the attorneys and their clients an opportunity to make a motion for your disqualification if they so desired.

The Commission cannot address the question of the Prosecuting Attorney's disqualification. There is no provision in the Code of Judicial Conduct which provides for a waiver of an existing conflict. If a conflict exists then a judge must recuse himself or herself. The Prosecuting Attorney could seek additional advice from the Office of Disciplinary Counsel to address any questions which may exist concerning a conflict.

It is hoped that this opinion fully addresses the question which you have raised. If you have any further question concerning 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 and written over the printed name.

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF:nb