



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
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March 6, 2009

Re: JIC Advisory Opinion 2009-06

Dear Judge

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. You asked whether you are disqualified from presiding in a custody case pending before you. The parties are the parents of one minor child. On March 18, 2008, the father had an initial consultation with you while you were in private practice. You have no memory of the consultation. On May 12, 2008, the father filed for custody through a different attorney. On January 1, 2009, you became Family Court Judge for the Family Court Circuit. You asked whether the initial consultation approximately one year ago disqualifies you from hearing the case.

To address the question which you have raised, the Commission has reviewed Canon 3E of the Code of Judicial Conduct. That Canon 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, 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;

March 6, 2009

Page Two

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law serving during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it; . . .

After reviewing the language contained in Canon 3E, it is the opinion of the Commission that you should not continue to hear this matter. While you did not become counsel of record in the case, you did have an initial consultation with one of the parties and in all probability learned disputed evidentiary facts concerning the case. While you say you cannot remember the consultation, it is the position of the Commission that you should recuse yourself from this matter because of the consultation.

You mentioned in your letter that the parties and their respective counsel agree for you to hear the case. The Code of Judicial Conduct does not provide for the waiver for any conflict that may exist. If a judicial officer has a conflict in the matter then that officer must be recused from the case.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Fred L. Fox, II".

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF:nb