



JUDICIAL INVESTIGATION COMMISSION

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March 23, 2009

Re: JIC Advisory Opinion 2009-09

Dear Judge

You have recently asked for an advisory opinion from the Judicial Investigation Commission. In your letter you stated that one of the newly elected magistrates in your circuit employs, as his magistrate assistant a woman whose husband is an attorney. The assistant's attorney husband does a significant amount of criminal defense work in both magistrate and circuit court. When the magistrate assistant worked for the previous magistrate, the practice was for that magistrate to not handle cases in which the assistant's husband served as counsel. The new magistrate wants to know if this is still the required procedure or is this a conflict that may be disclosed and waived by the parties.

To address the question which you have raised, the Commission has 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.

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 this Canon states that "[a] judge should disclose on the record information that the judge believes the parties or their lawyer's might consider relevant to the question of disqualification even if the judge believes there is no real reason for disqualification."

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Based on the language contained in the Canon and the information which you have provided, it is the opinion of the Commission that the magistrate should always disclose the relationship when the attorney appears. Recusal is not absolutely required but the decision must be made on a case by case basis. The magistrate assistant is not the judicial officer involved but the relationship is close enough to require that each case be reviewed after a disclosure has been made. A minority of the Commission felt that it would never be proper for the attorney to practice before the magistrate.

It is hoped that this opinion addresses the question 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, looped "F" and a distinct "II" at the end.

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF:nb