



## JUDICIAL INVESTIGATION COMMISSION

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

March 8, 2010

Re: JIC Advisory Opinion 2010-03

Dear Judge:

The Commission has reviewed a request which you have made seeking an advisory opinion. In that letter you state that you have been asked to be a part of an advisory committee for the Substance Abuse Early Intervention Program for . It is an initiative of the West Virginia Partnership to Promote Community Well Being which is part of the West Virginia's Governor-Appointed Substance Abuse Promotion/Early Intervention Planning Body. In the organization seeks referrals of children ages 13 to 17 that show signs of evidence of early drug use and in your case are involved in Status Offender or Delinquency (non-violent offenses) cases. As a judge you have the ability to send children to the program as a condition of probation or pre-trial release. You asked whether you may serve the Advisory Committee when you have the ability to send children to the program. You state that the program is struggling with lack of referrals and the Advisory Committee will be charged with assisting in having cases referred to the program.

To address the question which you have raised, the Commission has reviewed Canon 4 of the Code of Judicial Conduct which 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.

A. Extra-judicial activities in general. - A judge shall conduct all of the judge's extra-judicial activities so that they do not:

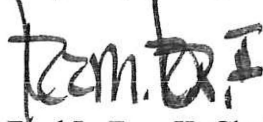
- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

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Based on the language in Canon 4 it is the opinion of the Commission that you should not serve on the Advisory Committee because of your ability to send children to the program. Also, you indicated that the program is struggling for lack of referrals and the Advisory Committee will be charged with assisting in having cases referred to the program. The activities of the Advisory Committee coupled with the charge to assist and having cases referred to the program could cast doubt on your capacity to act impartially as a judge.

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 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, bold "F" and "L".

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF:nb