



## JUDICIAL INVESTIGATION COMMISSION

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April 14, 2010

Re: JIC Advisory Opinion 2010-05

Dear Judge            and            :

The Judicial Investigation Commission has recently reviewed your correspondence in which you asked for an advisory opinion. You stated that when each of you have a conflict of interest and must be recused from a case, the case is assigned to either another sitting Family Court Judge or a specially appointed judge. When that happens you have been directed that your staff should provide support functions such as scheduling hearings and order preparation for the appointed judge. You are concerned that your staff's involvement is a potential breach of the Code of Judicial Conduct, Canon 3(C)(5) which states, "A judge shall not require any personnel subject to the judge's direction to act contrary to any code of ethics applicable to the judge or the personnel, or to engage in any activity or perform any work not reasonably related to the official position or functions of the personnel. A judge shall not require or knowingly permit such personnel to act, in any official capacity, contrary to the law." You also stated that in cases in which relatives of your staff members have been litigants the Supreme Court Administrative Office instructed you that your staff were not to be involved in those cases. You inquired about whether your staff can be involved in any cases in which you are disqualified as judges.

After reviewing your correspondence and the Canon in question, it is the opinion of the Commission that your staff should not participate in those cases in which a relative of a staff member is a litigant. The participation in such cases at a minimum creates an appearance of impropriety. However, in other cases in which you are disqualified as judges and the staff has no relatives who are litigants in the cases, staff participation is permitted and appropriate.

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In cases judges must make decisions determining findings of fact and conclusions of law. When judges are otherwise conflicted out of a case it is appropriate that a special judge be appointed to hear it because of the decision making responsibilities. The judges' staff however provides clerical support such as document preparation at the direction of a judge and scheduling matters also at the direction of a judge. For these reasons it is the opinion of the Commission that your staff may serve in those in which you are disqualified and in which they have no relatives who are litigants.

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 dark ink, appearing to read "Fred L. Fox, II". The signature is stylized with a large, looped "F" and "L", and a distinct "II" at the end.

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission

FLF:nb