



JUDICIAL INVESTIGATION COMMISSION

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July 19, 2010

Re: JIC Advisory Opinion 2010-09

Dear Judge

Your request for an advisory opinion was reviewed by the Judicial Investigation Commission at its recent meeting. In that opinion you asked if you as a circuit judge should be disqualified from any cases over which you presided while you were Family Court Judge. You indicate in your correspondence that the issue has been ongoing and you wonder whether or not you can ethically hear Family Court cases in which you were involved as Family Court Judge.

To address the question which you have raised the Commission has reviewed Canon 3E of the Code of Judicial Conduct. That section of Canon 3 deals with when judges should be disqualified from hearing matters. The general rule states that a judge "shall disqualify himself/herself in a proceeding in which the judge's impartiality might reasonably be questioned". . . . The Commission has reviewed this Canon and the correspondence which you sent explaining your current situation and the difficulties caused by excluding you from all Family Court cases.

After reviewing the Canon and your letter, it is the opinion of the Commission that any cases in which you had no part in the decision making of the case you may hear. Any cases in which you had made any previous findings, conclusions of law or a ruling you would be excluded from hearing. The Canon does not permit a judge to hear a matter in an appellate court over which that judge has presided and/or ruled and made findings in the lower court forum.

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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 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", and a smaller "I" at the end.

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF:nb