



JUDICIAL INVESTIGATION COMMISSION

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

July 19, 2010

Re: JIC Advisory Opinion 2010-10

Dear Magistrate

Your request for an advisory opinion was reviewed by the Judicial Investigation Commission at its recent meeting. In your request you state that your son has been employed as a police officer for the past 16-years and you always disclose that information in cases before you involving any police officers. He recently accepted a position as Chief of Police for the Police Department. You asked whether you should continue to disclose this information in cases involving the police officers and if a party objects, recuse yourself, or should you recuse yourself from all cases involving police officers.

To address the question which you have raised, the Commission has reviewed Canon 3E of the Code of Judicial Conduct and *State ex rel. Brown v. Dietrick*, 191 W.Va. 169, 444 S.E.2d 47 (1994). Canon 3E of the Code of Judicial Conduct deals with disqualification of judicial officers in cases and sets out various rules regarding per se disqualifications and disqualifications which may be required when certain factors are present on a case by case basis. In the *Brown* decision the West Virginia Supreme Court dealt with a case in which a magistrate's spouse was the chief of police for a town. That decision set forth the criteria to be followed when a member of that town's police force appeared before the magistrate.

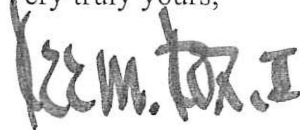
After a review of Canon 3E and the *Brown* decision, it is the opinion of the Commission that you must disclose that your son is the Chief of Police for the Police Department in all cases involving that agency. If your son has any involvement in the case brought before you by the Police Department you must disqualify yourself from that case. Otherwise, you must follow the procedures set forth in the *Brown* decision which would include disclosure, a possible hearing on any involvement your son may have had in the case before you and whether you may continue as a neutral and detached magistrate able to hear the case in a fair and objective manner. A copy of the *Brown* decision is attached for your information and review.

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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 cursive "Fox, II".

Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF:nb

Enclosure