



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831

January 4, 2022

Re: JIC Advisory Opinion 2022-01

Dear Mr. _____ :

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The facts giving rise to your request are as follows: You are a lawyer by trade. In addition, you are a member of the _____ County Commission. In late December 2021, Governor Justice nominated you to a seat on the newly formed Intermediate Court of Appeals. The nomination requires confirmation by the West Virginia Senate pursuant to W. Va. Code § 51-11-6(b)(4). You have indicated that following confirmation, you expect to take the oath of office sometime between May 1, and June 30, 2022. The Intermediate Court of Appeals is set to begin hearing cases on July 1, 2022. You want to know when you are required to resign your position as a county commissioner.

There is no provision in the Code of Judicial Conduct which addresses when it is appropriate for a non-judicial officer who is appointed to a judicial office to resign from his/her former office. However Article VIII § 7 states in pertinent part:

No justice, judge or magistrate shall hold any other office, or accept any appointment or public trust, under this or any other government; nor shall he become a candidate for any elective public office or nomination thereto, except a judicial office, and the violation of any of these provisions shall vacate his judicial office. . . .

It is the opinion of this Commission that the foregoing Constitutional provision requires your resignation from the County Commission just prior to taking the oath of

office for judge. Nonetheless, prior to taking the oath, you would still be subject to the majority of the Rules contained in the Code as would any judge-elect who was awaiting his/her seat on the bench. Lastly, you must disqualify yourself from presiding over any case involving the County Commission or any of its subsidiaries during the time you served as a commissioner.

The Commission wishes to take this opportunity to congratulate you on your nomination. We hope that this opinion fully addresses the issue which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns or desire additional advice.

Sincerely,



Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat