



JUDICIAL INVESTIGATION COMMISSION

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

February 19, 2002

Re: JIC Advisory Opinion 2002-07

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. In that correspondence you stated that you served as a County Magistrate from 1978 to 1998 and retired. In 1999 you were appointed a West Virginia Senior Status Magistrate. On January 14, 2002, you filed as a candidate for County Commissioner. You stated that you would like to maintain your West Virginia Senior Status Magistrate position and asked for an advisory opinion regarding whether you could be a candidate for the County Commission and still serve as a senior status magistrate.

The position of Senior Status Magistrate has been created by order of the Supreme Court of Appeals of West Virginia. That order states among other things that a magistrate admitted to senior status shall be bound by the prevailing Canons of Judicial Ethics and by the prevailing Rules of Complaints against judges and justices.

An examination of the Code of Judicial Conduct reveals two Canons that are relevant to the question which you have raised. Canon 5 and Canon 6 address your inquiry. Canon 6 states in relevant part:

Canon 6. Application of the Code of Judicial Conduct.

February 19, 2002

Page Two

A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including but not limited to Justices of the Supreme Court of Appeals, Circuit Judges, Family Law Masters, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Masters, is a judge within the meaning of the Code. All judges shall comply with this Code except as provided below. . . .

B. Retired judges. - (1) A retired judge admitted to senior status but who does not engage in the practice of law is not required to comply with section 4E.

(4) A retired judge, whether or not admitted to senior status and whether or not engaging in law practice, may be employed as a mediator or an arbitrator notwithstanding the provisions of section 4F.

Canon 5 states in relevant part:

Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity.

A. All judges and candidates.

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

Canon 6 expressly exempts senior status judges only from the provisions of Canon 4E, and 4F, and 4G. These provisions of the Code of Judicial Conduct deal with fiduciary duties, the practice of law, and service as an arbitrator or mediator.

Further, the Constitution of West Virginia Article 8 §7 states in relevant part:

No justice, judge or magistrate shall hold any other office or accept any appointment of 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. . . .

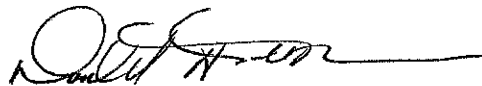
February 19, 2002

Page Three

Since the Administrative Order of the Supreme Court of Appeals establishing Senior Status Magistrates states that a judge admitted to senior status shall be bound by the prevailing Canons of Judicial Ethics and by the prevailing Rules on complaints against Justices and Judges, and since a senior status judge who does not practice law is exempted only from Canon 4E and 4F, all of the other provisions of the Code of Judicial Conduct would apply to senior status judges. Canon 5A(2) requires a judge to resign from judicial office upon becoming a candidate for a non-judicial office. Further, the Constitution of West Virginia prohibits a justice, judge or magistrate from holding any other office, accepting any appointment or public trust or becoming a candidate for any elective public office or nomination thereto except a judicial office. For these reasons, it is opinion of the Commission that you may not be a candidate for the county commission while serving as a Senior Status Magistrate.

If there is any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Donald H. Cookman', with a long horizontal flourish extending to the right.

Donald H. Cookman, Chairperson
Judicial Investigation Commission

DHC:nb