



## **JUDICIAL INVESTIGATION COMMISSION**

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

March 21, 2011

Re: JIC Advisory Opinion 2011-04

Dear Judge

In a recent letter you asked for an advisory opinion. You asked first about one of your probation officers who is married to an attorney who practices and has offices in County. You stated among other things, that the policy set by the prior circuit judge which you have continued is that the probation officer cannot work on any cases in which her husband is serving as counsel in any capacity.

You asked whether it is enough to require that the probation office "Chinese Wall" stating that the probation officer and her husband do not have overlapping cases in any capacity is sufficient. The Commission feels that the policy is satisfactory.

You asked whether disclosure needs to be given to any client of the attorney husband or any co-defendant. The Commission feels that disclosure should be given.

You asked whether if required to disclose the relationship in employment of the probation officer what the Commission would direct you to do in the event a party does seek your disqualification. The Commission suggests that you follow the Rule setting forth the procedures to be followed when disqualification of a judge is sought.

---

The Honorable  
March 21, 2011  
Page Two

Secondly, you state that your law clerk lives with her significant other, an attorney, and they are not married.

You asked if it is enough that the law clerk does not work on any of her significant other's cases (or his father's cases)? You asked whether the relationship must be disclosed in any case where the attorney appears before you? And you asked what the Commission would direct you to do in the event a party does seek your disqualification after disclosure of the relationship of employment of the law clerk. The Commission feels that the advisory opinion setting forth the procedures to be followed when the spouse of a law clerk for a circuit judge appears before that judge should be followed in this case as well. The Commission draws no distinction between a law clerk who is married to an attorney and a law clerk who has a significant other and who is living with an attorney. As to the requirements placed on the Court by a Motion to Disqualify, the Rule setting forth the procedures to be followed when a motion for disqualification is made should be followed.

Lastly, you state that your ERO is a para-legal who worked for the past 15-years at a law firm in                    County. The law firm practices in front of you. Since hiring the ERO you have disclosed her prior employment in hearings of cases that involve her prior employers. You then give both sides an opportunity to object to you presiding as judge in that specific case. You also privately ask her about her involvement in the cases and if she has actually worked on a specific case you intend to recuse yourself in that particular case.

You asked whether your policy is appropriate. The Commission feels that you do not need a policy in this matter since the ERO is no longer serving as a para-legal and is not in any decision making capacity or involved in doing research or discussing the outcome of any case with you like a law clerk.

You asked how long you must continue to disclose this information. The Commission feels that there is no need to disclose this information. And you asked what the Commission would direct you to do in the event a party seeks your disqualification. Again, the Commission would suggest your follow the rule and procedure set forth when a Motion to Disqualify is made.

The Honorable  
March 21, 2011  
Page Two

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 black ink, appearing to read "Ronald E. Wilson", with a long horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson  
Judicial Investigation Commission

REW:nb



