



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 27, 2012

Re: JIC Advisory Opinion 2012-03.

Dear Magistrate :

Your January 18, 2012 request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: You are presently a Magistrate in _____ County. You are considering a run for the non-judicial office of Sheriff. You want to know if you have to immediately resign as Magistrate upon announcing your candidacy for Sheriff or if you can continue working until a new magistrate is appointed by the circuit judge. You also want to know if it is a violation to announce your resignation on the public street/sidewalk next to the building which houses Magistrate Court and then announce your candidacy for Sheriff. According to you, the building which houses the Magistrate Court of _____ County is a privately owned building. The Court is on the third floor, the second floor is empty, and the first floor is occupied by a bank. There are no signs anywhere on the outside of the building that state Magistrate Court is an occupant.

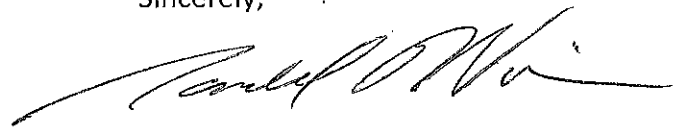
Canon 5A(2) of the Code of Judicial Conduct provides in pertinent part that "a judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or general election. . . ." This provision is consistent with Article VIII, Section 7 of the West Virginia Constitution which provides that "[n]o 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." See also *JIC Advisory Opinion 12/14/2009* (Mental Hygiene Commissioner, as a judicial officer, may not, at the same time, hold the position of part-time assistant prosecutor); *JIC Advisory Opinion 07/03/2007* (Mental Hygiene Commissioner cannot concurrently serve as a Municipal Judge);

and JIC Advisory Opinion 6/14/2007 (Mental Hygiene Commissioner cannot concurrently sit as an elected member of city council).

Based upon the foregoing, you must resign as Magistrate immediately upon announcing your candidacy for Sheriff. You cannot remain in the former position pending appointment of a new magistrate. The Commission is of the opinion that there is nothing in the Code that precludes you from making your announcement on a public sidewalk/street outside Magistrate Court, particularly if you have resigned your judicial position before announcing your candidacy for Sheriff.

It is hoped that this opinion fully addresses the issues which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald E. Wilson", written in a cursive style.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat