



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831
February 23, 2012

Re: JIC Advisory Opinion 2012-06.

Dear Commissioner

Your request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission at its February 10, 2012 meeting. The factual scenario giving rise to your request is as follows: You are presently the Mental Hygiene Commissioner for _____ Counties. You also serve, on a substitute basis, as the Drug Court Judge for the Circuit. You intend to run for the non-judicial office of House of Delegates. You want to know if you have to immediately resign as Mental Hygiene Commissioner upon announcing your candidacy for House of Delegates. You also want to know if you could be appointed as Mental Hygiene Commissioner for the limited purpose of serving as the substitute Drug Court Judge during the pendency of the election.

Canon 6A of the Code of Judicial Conduct states that "anyone, whether or not a lawyer, who is an officer of a judicial system and performs judicial functions, including but not limited to . . . Mental Hygiene Commissioners . . . is a Judge within the meaning of the Code. All judges shall comply with this Code except as provided below." Canon 6C provides:

C. Continuing part-time judge. A continuing part-time judge:

(1) is not required to comply

(a) except while serving as a judge, with Section 3B(9); and

(b) at any time with Sections 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2), and 5D.

(2) may practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, but shall not act as a lawyer in a

proceeding in which the judge has served as a judge in any other proceeding related thereto, or in any matter involving the same subject-matter jurisdiction.

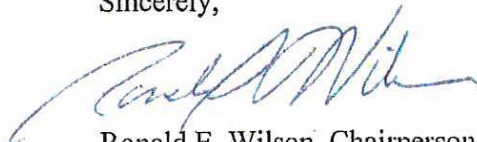
Pursuant to the Code of Judicial Conduct "a continuing part-time judge" means a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, a part-time family law master, a juvenile referee, and a mental hygiene commissioner. As you can see, the relevant provision of Canon 5A(2) is not listed as an exception for a continuing part-time judge.

Canon 5A(2) states 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 Mental Hygiene Commissioner immediately upon announcing your candidacy for House of Delegates. Likewise, you cannot be appointed as Mental Hygiene Commissioner for the limited purpose of serving as the *substitute* Drug Court Judge.

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 blue ink, appearing to read "Ronald E. Wilson", is written over a horizontal line.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat