



**JUDICIAL INVESTIGATION COMMISSION**

City Center East - Suite 1200 A  
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Charleston, West Virginia 25304  
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February 23, 2012

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Re: JIC Advisory Opinion 2012-10.

Dear Judge [REDACTED]

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: During the course of a divorce action, you became aware that the parties may have spent their children's proceeds in violation of a Circuit Court order entered several years ago in a personal injury case. You appointed a *Guardian Ad Litem* to investigate the matter. According to you, the *Guardian* submitted a report stating that the parties did indeed "misappropriate and misuse" the funds. You want to know if you can inform the Circuit Court of the alleged misappropriation or if you have the ability to order the *Guardian* to provide the information since Family Court cases are confidential.

Canon 3B(11) states that "[a] judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity." The term "nonpublic information" is defined as "information that, by law, is not available to the public. Nonpublic information may include but is not limited to: Information that is sealed by statute or court order, impounded, or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports." The term "law" is defined by the Code as "court rules, statutes, constitutional provisions, and decisional law."

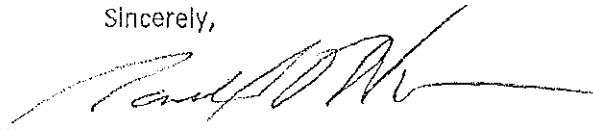
Rule 6A of the West Virginia Rules of Practice and Procedure for Family Court allows certain exceptions to the confidentiality rule. For example, Rule 6A states that "a family court

Judge or circuit court Judge may open and inspect the entire contents of the court file in any case pending before the judge's court." Rule 6(c) states that "for good cause shown," the court may enter an order permitting a person who is not permitted access to a court file to examine and/or copy documents in a file. The Rule further provides that the requisite order shall set forth specific findings which demonstrate "why the interests of justice necessitate" the examination and/or copying. . ."

The Commission is of the opinion that the alleged misappropriation of funds constitutes the good cause necessary for the dissemination of the information in question to the Circuit Court. Since the *Guardian Ad Litem* performed the investigation and has first-hand knowledge about the alleged misappropriation, you should order him/her to provide the necessary information to the Circuit Court.

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

Ronald E. Wilson, Chairperson  
Judicial Investigation Commission

REW/tat