



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 24, 2012

Re: JIC Advisory Opinion 2012-15.

Dear Judge :

Your request for an advisory opinion to Counsel was recently reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: There is a vacancy for Mental Hygiene Commissioner in the 22nd Judicial Circuit. You indicated that there has been some difficulty in filling the part-time position in previous years. According to you, the combined number of guardian/conservator and mental hygiene cases filed is usually pretty low and that last year there were only 21 such matters heard by the Mental Hygiene Commissioner. Therefore, the Mental Hygiene Commissioner position is very much part-time in your Jurisdiction. A local attorney who serves as a part-time city attorney has expressed interest in serving as the Mental Hygiene Commissioner. You want to know if she can serve concurrently as Mental Hygiene Commissioner and part-time city attorney.

W. Va. Code § 27-5-1, *et seq.*, gives the Chief Judge in each judicial circuit of this State the authority to appoint a competent attorney to serve as a Mental Hygiene Commissioner to preside over involuntary hospitalization hearings. By administrative order, the Circuit Court can also delegate evidence taking in guardianship/conservatorship cases to the Mental Hygiene Commissioner.

The Code of Judicial Conduct recognizes that a Mental Hygiene is a continuing part-time judge. Canon 6C of the Code of Judicial Conduct states:

A continuing part-time judge:

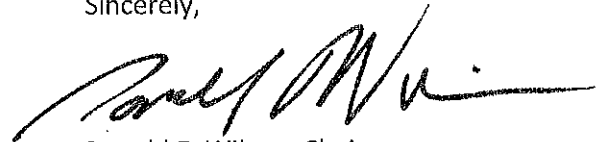
- (1) Is not required to comply
 - (a) except while serving as a judge, with Sections 3(B)(9); and
 - (b) at any time with Sections 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2) and 5D.
- (2) may practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the 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.

The Comment to Canon 6C notes that a part-time Mental Hygiene Commissioner shall not accept any mental hygiene matters or serve as an attorney in any proceeding related to a case in which he or she has served as a Mental Hygiene Commissioner.

Based upon the foregoing, the attorney can serve as both a part-time mental hygiene commissioner and a part-time city attorney. The attorney should be mindful of any case conflicts and should address them accordingly.

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", with a long horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat