



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 26, 2012

Re: JIC Advisory Opinion 2012-16.

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 Circuit Judge in the Judicial Circuit. An applicant for appointment to the position has contacted you and asked to write a letter of recommendation on his/her behalf to Governor. You want to know if it is permissible for you to write such a letter.

Canon 2B of the Code of Judicial Conduct states:

A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or knowingly permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

However, the Comment to the Canon notes that "[j]udges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a

judgeship.” Meanwhile, Canon 5A(1)(b) states that “a judge or a candidate for election or appointment to judicial office shall not publicly endorse or publicly oppose another candidate for public office.”

W. Va. Code § 3-10-3a establishes the Judicial Vacancy Advisory Commission to assist the Governor in filling judicial vacancies. W. Va. Code § 3-10-3a (f) requires the Advisory Commission to adopt written policies that formalize and standardize all operating procedures. Based upon this authority, the Advisory Commission requires all candidates for judicial vacancies to provide letters of recommendation. Importantly, W. Va. Code § 3-10-3a(i) states that:

[T]he [Advisory] Commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter twenty-nine-b [§§ 29B-1-1 et seq.] of this code, except for the list of best qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection. . . .

Based upon the foregoing, you may submit a letter of recommendation for an applicant for appointment to a judicial vacancy only if it is not considered a public endorsement of that individual but is used solely by the appointing authority and can remain confidential.

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, sweeping horizontal line extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat