



**JUDICIAL INVESTIGATION COMMISSION**

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

May 3, 2012

Re: JIC Advisory Opinion 2012-18.

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: You are a Mental Hygiene Commissioner for \_\_\_\_\_ Counties. You are also the appointed Municipal Judge for the City of \_\_\_\_\_, West Virginia. You want to know if you can concurrently serve as a Mental Hygiene Commissioner and a part-time appointed Municipal Judge. Secondly, you want to know if you can represent clients in misdemeanor truancy cases in magistrate or circuit court while at the same time serving as a municipal judge.

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 Commissioner 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.

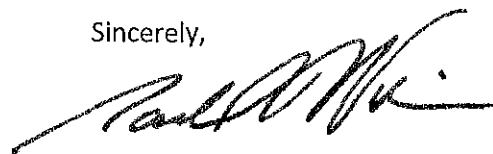
The Comment to Canon 6C notes that a part-time Mental Hygiene Commissioner shall not accept any mental hygiene matters or serve as an attorney in any proceeding related to a case in which he or she has served as a Mental Hygiene Commissioner. In JIC Advisory Opinion 2012-15, the Commission recently held that an attorney can serve as both a part-time mental hygiene commissioner and a part-time city attorney.

Based upon the foregoing, the Commission finds that you can concurrently serve as a Mental Hygiene Commissioner and a part-time appointed Municipal Judge. You should be mindful of any case conflicts and address them accordingly. To the extent that this opinion is inconsistent with JIC Advisory Opinion 07/03/2007 (Mental Hygiene Commissioner cannot concurrently serve as a Municipal Judge) the latter is overruled.

Please be advised that the Commission is unable to address your second question because municipal and police judges are not subject to the Code of Judicial Ethics. See JIC Advisory Opinion 2/26/1986.

The Commission hopes that this opinion answers the primary issue that you raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,



Ronald E. Wilson, Chairperson  
Judicial Investigation Commission

REW/tat