



JUDICIAL INVESTIGATION COMMISSION

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

June 29, 2012

Re: JIC Advisory Opinion 2012-19.

Dear Magistrate :

Your request for an advisory opinion to Counsel was recently reviewed by the Judicial Investigation Commission. You want to know if a non-incumbent candidate for judicial office violates the Code of Judicial Conduct when his/her conduct results in both an emergency and final domestic violence order of protection being issued. You also want to know if the judicial officer(s) presiding over the matters have a duty to file an ethics complaint against the non-incumbent candidate. Lastly, you raise some concerns about reporting "given the confidential nature of domestic violence proceedings."

Canon 6A of the Code of Judicial Conduct provides that "[a]ll candidates for judicial office shall comply with the applicable provisions." Canon 5 governs the political activity of judicial officers and candidates. Canon 5E states that "Canon 5 generally applies to all incumbent judges and judicial candidates. A candidate whether or not an incumbent and whether or not successful, is subject to judicial discipline for his or her campaign conduct."

Canon 5A(3)(a) states that "a candidate for a judicial office shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. . . ." This provision is consistent with a judicial officer's duty to uphold the integrity and independence of the judiciary set forth in Canon 1 and the requirement that he/she avoid impropriety and the appearance of impropriety in all activities contained in Canon 2.

With these principles in mind, the Commission finds that a non-incumbent candidate for judicial office may violate the Code of Judicial Conduct when his/her actions result in both an emergency and final domestic violence order being issued. However, the Commission cannot definitively say whether the conduct actually violates the Code without a complaint being filed, a thorough investigation being conducted by the Office of Disciplinary Counsel, and a full review of the evidence by the JIC.

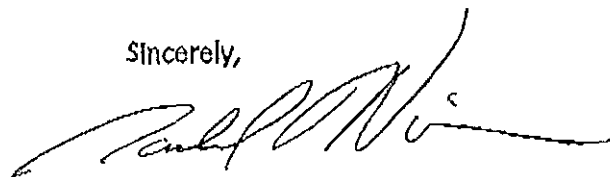
Canon 3D(1) of the Code of Judicial Conduct requires judicial officers to file complaints in such matters and provides:

A judge who receives information indicating a substantial likelihood that another judge has committed a violation of [the] Code should take appropriate action. A judge having knowledge that another judge has committed a violation of [the] Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

The term "appropriate authority" denotes the authority with responsibility for initiation of the disciplinary process with respect to the violation to be reported or in this case the JIC. The term "knowledge" means the actual knowledge of the fact in question. Given the knowledge you have concerning the matter and the tenets set forth in Canon 3D(1), you have a duty to report the perceived violation to JIC because of the serious nature of the perceived misconduct and the substantial question it raises concerning the individual's fitness to hold judicial office. Since domestic violence orders are matters of public record, you could attach a copy of the Order to any complaint filed. Moreover, Rule 2.4 of the Rules of Judicial Disciplinary Procedure states that "[t]he details of complaints filed or investigations conducted by the Office of Disciplinary Counsel shall be confidential. . . ." Based on this, the details of the complaint would remain confidential unless some disciplinary action was to be taken against the individual in question.

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", written in a cursive style.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat