



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 17, 2013

Re: JIC Advisory Opinion 2013-05.

Dear Judge :

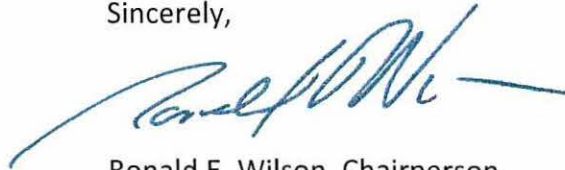
Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission at its May 3, 2013 meeting. The factual scenario giving rise to your request is as follows: An appeal has recently come before you which involves a matter that you presided over as a Family Court Judge in 2005. According to you, the instant appeal does not concern issues over which [you] personally presided but deals with a more recent decision of the current family court judge. You indicate that the parties are willing to waive any conflict so that you may hear the most recent appeal. You want to know if the conflict can be waived so that you may hear the appeal.

Your query is similar to one submitted by you in 2010, although in that scenario you did not ask whether such a conflict could be waived by the parties. At the time, you were advised that as a Circuit Court Judge you may hear any case in which you had no part in the decision-making process as a Family Court Judge (See July 19, 2010 Advisory Opinion attached hereto

and made a part hereof). However, "[a]ny cases in which you had made any previous findings, conclusions of law or a ruling you would be excluded from hearing." *Id.* Additionally, the Commission informed you that Canon 3E of the Code of Judicial Conduct "does not permit a judge to hear a matter in an appellate court over which that judge has presided and/or ruled and made findings in the lower court forum." *Id.* Consistent with this ruling, the Commission now finds that a waiver is not sufficient to overcome your disqualification from appeals involving matters that you previously presided over as a Family Court Judge.

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 blue 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