



JUDICIAL INVESTIGATION COMMISSION

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

July 31, 2013

Re: JIC Advisory Opinion 2013-07.

Dear Commissioner

Your request for an advisory opinion was recently reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: You presently serve as a Mental Hygiene Commissioner for _____ County and the backup Commissioner for _____ Counties. You also serve as the designated Drug Court Judge for all three counties. You acknowledge that Drug Court utilizes the services of Day Report on a regular basis. Day Report Officers regularly appear in Drug Court to address the progress of plan participants and testify in hearings concerning violations.

You also serve as Chairman of the South Valley Day Report Center Board (hereinafter "Board"). The Board is a product of the West Virginia Community Corrections Act found in W. Va. Code § 62-11C-1, *et seq.* The Act authorizes counties, Class I or II municipalities, or any combination thereof to develop, establish and maintain community-based alternative sentencing programs. W. Va. Code § 62-11C-6 provides that such a Board is to consist of no more than fifteen voting members who are residents of the county or counties represented. At least one member must be a public defender or criminal defense attorney. See W. Va. Code § 62-11C-6(d)(3). You sit on the Board as the criminal defense attorney representative and are a voting member.

By statute, one Board member must also have "a background in mental health care and services" and he or she is "appointed by the commission or commissioners of the county or counties represented by the board." See W. Va. Code § 62-11C-6(d)(5). Additionally, at the discretion of the State Supreme Court, a circuit judge or magistrate may serve on the subcommittee as *ex officio*, nonvoting members. See W. Va. Code 62-11C-6(e). There is no provision that calls for a Mental Hygiene Commissioner serve on the Board.

You want to know if you can serve on the South Valley Day Report Center Board while you are a Mental Hygiene Commissioner and designated Drug Court Judge. To address the question which you have raised, the Commission has reviewed Canon 4C(3) of the Code of Judicial Conduct which provides:

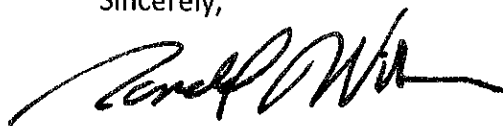
A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or non-legal adviser of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members subject to the following limitations:

- (a) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

The Code is clear that a judicial officer should not serve on a Board if it is likely that the organization will be involved in proceedings that would ordinarily come before the judge or if the entity is an adverse participant in any court in the jurisdiction where he or she serves. Day Report Officers are regularly involved in court proceedings at all levels and often must take an adverse position to a plan participant in violation hearings. Accordingly, you are precluded from serving on the South Valley Day Report Center Board. See also JIC Advisory Opinion 5/21/1998 (judicial officer prohibited from serving on a law enforcement advisory board that participates in hiring, training and employing police officers and procures equipment, technology and other material directly related to law enforcement functions); and JIC Advisory Opinion 2013-01 (judicial officer cannot serve on board of directors of county emergency ambulance authority because EMTs regularly testify as witnesses in criminal and civil cases involving injuries to a person).

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