



JUDICIAL INVESTIGATION COMMISSION

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

August 30, 2013

Re: JIC Advisory Opinion 2013-10.

Dear Magistrate

Your request for an advisory opinion was recently reviewed by the Judicial Investigation Commission. You want to know if it is permissible for your wife to work as a bail bondsman for one of the bail bonding companies in your area. You recognize that that your wife could not do any bonding business in your court. However, you want to know if she could act as a bail bondsman before other judicial officers in _____ Counties.

To address the question which you have raised, the Commission has reviewed Canons 1A, 2A and 3E(1)(c) of the Code of Judicial Conduct. Canon 1A provides:

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 2A states:

A judge shall respect and comply with the law, shall avoid impropriety and the appearance of impropriety in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 3E(1)(c) states:

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse . . . has an economic interest in the subject matter in controversy or is a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

Magistrates' duties are many and varied. With respect to criminal cases, magistrates hear misdemeanors and conduct preliminary examinations in felonies. They also issue and record affidavits, complaints, arrest warrants, and search warrants, as well as set bail. Rule 5(f) of the Rules of Criminal Procedure for Magistrate Courts provides that "[t]he magistrate who originally sets bail retains jurisdiction with respect to bail only until the case is assigned. The assigned magistrate shall then have jurisdiction until the preliminary examination is held or waived, until the trial is held, or until the case is otherwise disposed." W. Va. Code § 50-1-12 states that no magistrate shall acquire or hold any interest in any matter which is before the magistrate court.

W. Va. Code § 51-10A-1(a) defines "bail bondsman" as:

[A]ny person, partnership or corporation engaged for profit in the business of furnishing bail, making bonds or entering into undertakings as surety, for the appearance of persons charged with a criminal offense or violation of law punishable by fine or imprisonment before any court within or without this state. The term includes, but is not limited to, persons conducting a bonding business. . . .

Typically, a bail bondsman earns his or her money by charging a percentage fee of the bond amount he puts up for a defendant in a criminal case.

Based upon the foregoing, the Commission felt that it would be improper for your wife to work as a bail bondsman while you are a Magistrate. Despite your best efforts, the situation could lead to difficulties with on-call duties and case reassignments or potentially cause allegations against you at a future time. See JIC Advisory Opinion 8/19/2005 (appearance of impropriety would be created if a Magistrate's brother served as a bail

bondsman in his court).

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 stylized, flowing script.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat