



**JUDICIAL INVESTIGATION COMMISSION**

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

November 21, 2013

Re: JIC Advisory Opinion 2013-17.

Dear Judge

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. You have pending before you a juvenile delinquency case involving the step-daughter of a magistrate who serves in your county. All parties have waived any potential conflict and asked you to hear the matter. You want to know if you should voluntarily disqualify yourself or preside over the case.

The Commission has reviewed Canon 3E of the Code of Judicial Conduct to address the question which you have raised. Canon 3E states in relevant part:

**Canon 3. A judge shall perform the duties of judicial office impartially and diligently.**

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

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding . . . .

Whenever there is a question of disqualification, an analysis must occur of the underlying relationship and when it rises to a level causing a reasonable questioning of a judge's impartiality. In *State ex rel. Brown v. Dietrick*, 191 W. Va. 169, 444 S.E.2d 47 (1994), the Court considered whether the circuit court was correct in holding that a search warrant issued by a magistrate was void because the magistrate was married to the Chief of Police and one of his officers had obtained the warrant. The Court held that in any criminal matter where the magistrate's spouse was involved the magistrate would be disqualified from hearing that case. The Court declined to extend a *per se* rule to other members of the police force. The fact that the magistrate's spouse was the chief of police of a small agency did not automatically disqualify the magistrate who could be otherwise neutral and detached from issuing a warrant sought by another member of the police force.

In *Tennant v. Marion Health Care Foundation*, 194 W. Va. 97, 459 S.E.2d 374 (1995), the Court held that a judge should disqualify himself/herself from any proceeding in which his/her impartiality might reasonably be questioned. The Court noted that the avoidance of the appearance of impropriety is as important in developing public confidence in the judicial system as avoiding actual impropriety itself and that the judge should take appropriate action to withdraw from a case in which the judge deems himself/herself biased or prejudiced. *Tennant* cited the commentary to Canon 3E(1) which states that a judge should timely disclose on the record information which he/she believes the parties or their lawyers might consider relevant to the question of disqualification. Litigants and counsel should be able to rely on judges complying with the Code of Judicial Conduct. There is no obligation imposed on counsel to investigate the facts known by the judge which could possibly disqualify the judge. The judge has a duty to disclose any facts even if the judge does not feel that they are grounds for disqualification *sua sponte*.

*Tennant* also addressed the rule that a judge has an equally strong duty to sit where there is no valid reason for recusal. In so doing, the Court set forth a balancing test between the two concepts. While giving consideration to the administration of justice and the avoidance of the appearance of unfairness, a judge must also consider whether cases may be unfairly prejudiced or delayed or discontent may be created through unfounded charges of prejudice or unfairness made against the judge. The Court noted that the standard for recusal is an objective one. Facts should be viewed as they appear to the well-informed, thoughtful and objective observer rather than the hypersensitive, cynical and scrupulous person.

Based upon the information which you have provided, it is the opinion of the Commission that you do not have to disqualify yourself. We hope this opinion fully addresses the issue 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 stylized flourish at the end.

Ronald E. Wilson, Chairperson  
Judicial Investigation Commission

REW/tat



