



JUDICIAL INVESTIGATION COMMISSION

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

January 14, 2014

Re: JIC Advisory Opinion 2014-02.

Dear

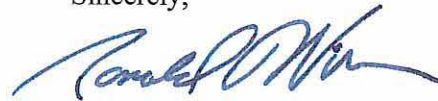
Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: You are presently presiding over a divorce case where the wife's counsel had previously represented the husband in land transactions. Furthermore, the financial disclosures indicate that the wife's counsel and the husband are/were co-owners of more than one parcel of land. You believe this may raise a conflict of interest issue pursuant to Rule 1.7 of the Rules of Professional Conduct. You recognize that the Comment to Rule 1.7 primarily places the responsibility for resolving attorney conflicts with the lawyer undertaking the representation. You "perceive that either the wife or the husband may be harmed by this conflict and/or that the conflict may call into question the fair and efficient administration of justice." You want to know what your responsibilities are in such a situation.

Canon 3D(2) of the Code of Judicial Conduct provides that "[a] judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action." The Commentary to the provision states that "[a]ppropriate action may include direct communication with the . . . lawyer who has committed the violation" or it may include other direct action that is available. Indeed, the Comment to Rule 1.7 of the Rules of Professional Conduct also states that "in litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility."

Based upon the foregoing, a majority of the Commission is of the opinion that you should raise the facts that you have uncovered with both parties to confirm your understanding of them and give each side an opportunity to take appropriate action. A minority of the Commission members believe that the Canon and its Comment give specific direction to a judge and the Commission should not have issued an Advisory Opinion in response to your request.

We hope this opinion fully addresses the issue which you have raised.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald E. Wilson", written in a cursive style.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat