



## **JUDICIAL INVESTIGATION COMMISSION**

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

February 4, 2014

Re: JIC Advisory Opinion 2014-04.

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 one of the lawyers selected by the Judicial Vacancy Advisory Commission as a finalist to fill a Circuit Court Judge vacancy. The names of the finalists were submitted to West Virginia Governor Earl Ray Tomblin late last year. Presently, two senior status judges are serving as temporary replacements until the Governor fills the vacancy.

In the meantime, the Governor either has or you anticipate that he will soon declare the position officially vacant which will allow it to be placed on the 2014 election ballot. You intend to run for the position but recognize that you cannot file for candidacy until the official vacancy announcement has been made and a filing period has been declared. Once that happens, you want to know if you can campaign and your committee can solicit funding and support for your election even though you may still be a candidate for appointment.

Canon 5E of the Code of Judicial Conduct states that a candidate for judicial office is subject to judicial discipline for his or her campaign conduct whether or not an incumbent and whether or not successful. Canon 5B provides that "[a] candidate for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or

otherwise, to support his or her candidacy.” However, Canon 5C sets forth parameters for candidates subject to public election. For example, a candidate for judicial election may speak to gatherings on his or her own behalf, appear in media advertisements supporting his or her candidacy and distribute pamphlets and other promotional campaign literature supporting his or her candidacy. See Canon 5C(1)(b). Importantly, a candidate may also establish a campaign committee to conduct the campaign, solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate’s campaign and obtain public support for his or her candidacy. See Canon 5C(2).

The Commission is of the opinion that the prohibitions contained in Canon 5B(1) relate strictly to the judicial appointment process and in no way bar a candidate who may also be running for the open seat in a publicly held election from campaigning and organizing a committee to solicit reasonable funding and support. In other words, once a candidate for appointment declares his or her candidacy for election, Canon 5C and not Canon 5B(1) controls and the candidate for judicial election is able to campaign and establish a committee which can solicit funding and support for the election.

We hope this opinion fully addresses the issue which you have raised. If there is any further question regarding this matter, please do not hesitate to contact the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald E. Wilson", with a stylized flourish at the end.

Ronald E. Wilson, Chairperson  
Judicial Investigation Commission

REW/tat