



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 30, 2014

Re: JIC Advisory Opinion 2014-14

Dear

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: Your current law clerk is married to another lawyer who practices in County. She also happens to be your former law clerk. West Virginia Code § 44A-3-11 (2009) provides for the appointment of a fiduciary commissioner or other person to perform a semi-annual review of guardian/conservator filings. Per the statute, the appointed person is to be paid from the Enforcement of Guardianship and Conservator Act Fund.

You have expressed concern "that the protected persons who are the subject of these cases are open to unchecked risk with no one looking to see that such reports are filed or that such reports are sufficient." You believe there is a need for such oversight in your jurisdiction and you would like to appoint the wife of your current law clerk to the position. You are familiar with the quality of her work and believe she is best suited for the task.

She would not serve as an advocate and would not appear in court. Her role would be to see that the reports are sufficient and that they are filed by their due date. If a report is not sufficient or not filed, her role, per the statute, is simply to inform the Court that further investigation is warranted. You would then appoint another attorney to investigate and set a hearing on the matter. According to you, her role would "essentially [be] clerical."

You want to know if you are precluded from appointing your former law clerk as the fiduciary commissioner because she is married to your current law clerk. To address your question, the Commission has reviewed Canons 1, 2A, 3C(4) and 3E(1) of the Code of Judicial Conduct.

Canon 1 states that "[a]n 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 2(A) provides that "[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."

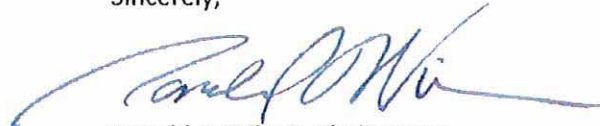
Canon 3C(4) states that "[a] judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered." The Code defines "nepotism" as "favoritism shown in the treatment of a member of the judge's family or a person living in the judge's household."

Canon 3E(1) provides that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. . . ."

Based upon the foregoing, the Commission believes the appointment of your current law clerk's spouse as fiduciary commissioner per W. Va. Code § 44-3-11 (2009) would not violate the Code of Judicial Conduct. Her role would be fiduciary in nature and not adversarial, she is not expected to do anything more than file a cautionary report and you are familiar with her work and believe she is the best candidate for the position.

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 long horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission