



JUDICIAL INVESTIGATION COMMISSION

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

September 23, 2014

Re: JIC Advisory Opinion 2014-17.

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: Your father was killed in the November 20, 1968 Farmington No. 9 Mine Disaster. Recently, certain evidence was discovered which may lead to a class action lawsuit being filed in _____ County. You were recently appointed the administrator of your father's estate. You are also the sole remaining heir to his estate. The lawyers contemplating the suit have asked if you could serve as the lead plaintiff or one of the representative plaintiffs for the class. If not, can you be a member of the class, or file your own separate action.

The Commission has reviewed Canon 2B of the Code of Judicial Conduct to address the question which you have raised. Canon 2B states in relevant part that "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . . ." By way of example, the Commentary to the Canon notes that "a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family."

The old maxim that "justice is open to all" includes judicial officers who seek redress for their grievances. In fact, Canon 3E(1)(c) and (d)¹ of the Code of Judicial

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 . . . has an economic interest in the subject matter in controversy or is a party to the proceeding. . . .;

Conduct reinforce a judge's right to be a litigant whenever necessary. Therefore, you can be a member of the class or file your own separate action. However, Canon 2B clearly precludes you from serving as a representative plaintiff in a class action lawsuit.

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 blue ink, appearing to read "Ronald E. Wilson".

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat