



JUDICIAL INVESTIGATION COMMISSION

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

December 15, 2014

Re: JIC Advisory Opinion 2014-22.

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission at its December 12, 2014 meeting. The factual scenario giving rise to your request is as follows: In JIC Advisory Opinion 2013-02, the Commission advised you that you did not have to disqualify yourself from presiding over a February 2013 case involving two attorneys who formerly represented you. However, the Commission informed you that you must disclose the prior relationship to all parties involved and give them an opportunity to raise an objection should they so desire. The two attorneys had represented you in two related judicial campaign funding cases prior to your November 2012 election to the Court. Their representation concluded in mid-September 2012. The representation was brief, having lasted only two or three months. You have never had a personal or social relationship with the attorneys. For the past two years, you have disclosed the prior relationship whenever either of these attorneys has appeared before the Court. You want to know if you have a continuing obligation to disclose the prior relationship.

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

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 the proceeding in which the judge's impartiality might reasonably be questioned. . . .

As you correctly note, the Comment to Canon 3(E) says "a judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification." An objective standard applies which "requires a factual basis for questioning a judge's impartiality." *Tennant v. Marion Health Care Foundation*, 194 W.Va. 97, 109, 459 S.E.2d 374, 386 (1995).

After more than two years of consistent disclosure the Commission is of the opinion that you no longer have to advise parties of the prior representation as long as there is no factual basis that requires you to do so. This decision is consistent with our holding in JIC Advisory Opinion 4/1/2003 in which we stated that a family court judge need not disqualify himself or herself with respect to the attorney campaign chairperson or treasurer appearance in family court matters. However, the judge should, for a period of six months from the closure of the campaign and committee, disclose the prior affiliation to the parties in litigation.

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", written in a cursive style.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat