



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
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Charleston, West Virginia 25304
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January 29, 2015

Re: JIC Advisory Opinion 2015-01.

Dear

Your recent request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: You own five rental properties that you now wish to sell. You will not enter into any land sale contracts but will sell the property outright. The interested buyers for two of the five properties are in the criminal bail bonding business. There are currently seven bonding companies that service your Circuit. As the chief judge you handle any criminal bonding issues that may arise. You want to know if the sale of the property to the bail bondsmen would disqualify you from presiding over any bond hearings or issues involving them.

To address the question which you have raised, the Commission has reviewed Canons 2A and 3E of the Code of Judicial Conduct and two opinions of the Supreme Court of Appeals of West Virginia. Canon 2A states that "[a] judge shall . . . avoid the appearance of impropriety in all of the judge's activities. Meanwhile, Canon 3E provides in pertinent part:

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 including, but not limited to instances where: . . .

(c) the judge knows that he or she, individually or as a fiduciary . . . has any other more than *de minimis* interest that could be substantially affected by the proceeding; . . .

When a question of disqualification arises an analysis must be made of when that relationship rises to a level causing a reasonable questioning of a judge's impartiality. In *State ex rel. Brown v. Dietrick*, 191 W. Va. 169, 444 S.E.2d 47 (1994), the Court considered whether the circuit court was correct in holding that a search warrant issued by a magistrate was void because the magistrate was married to the Chief of Police and one of his officers had obtained the warrant. The Court held that in any criminal matter where the magistrate's spouse was involved the magistrate would be disqualified from hearing that matter. The Court declined to extend a *per se* rule to other members of the police force. The fact that the magistrate's spouse was the chief of police of a small agency did not automatically disqualify the magistrate who could be otherwise neutral and detached from issuing a warrant sought by another member of the police force.

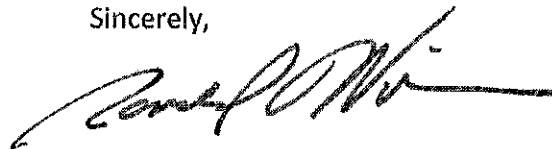
In *Tennant v. Marlon Health Care Foundation*, 194 W. Va. 97, 459 S.E.2d 374 (1995), the Court held that a judge should disqualify himself or herself from any proceeding in which his impartiality might reasonably be questioned. The Court noted that the avoidance of the appearance of impropriety is as important in developing public confidence in the judicial system as avoiding actual impropriety and that the judge should take appropriate action to withdraw from a case in which the judge deems himself or herself biased or prejudiced. *Tennant* cited the commentary to Canon 3E(1) which states that a judge should timely disclose on the record information which he/she believes the parties or their lawyers might consider relevant to the question of disqualification. Litigants and counsel should be able to rely on judges complying with the Code of Judicial Conduct. There is no obligation imposed on counsel to investigate the facts known by the judge which could possibly disqualify the judge. The judge has a duty to disclose any facts even if the judge does not feel that they are grounds for disqualification *sua sponte*.

Tennant also addressed the rule that a judge has an equally strong duty to sit where there is no valid reason for recusal. In so doing, the Court set forth a balancing test between the two concepts. While giving consideration to the administration of justice and the avoidance of the appearance of unfairness, a judge must also consider whether cases may be unfairly prejudiced or delayed or discontent may be created through unfounded charges of prejudice or unfairness made against the judge. The Court noted that the standard for recusal is an objective one. Facts should be viewed as they appear to the well-informed, thoughtful and objective observer rather than the hypersensitive, cynical and suspicious person.

In applying the foregoing to your factual scenario, the Commission is of the opinion that you do not have to disqualify yourself from presiding over any matters involving the bail bondsmen in question or their bonding companies. However, you must disclose the relationship in every hearing/issue involving the bondsmen in question or their bonding companies during negotiations and the pendency of the sale. If there is an objection to your presiding because of the relationship, you must then take the appropriate steps such as those contained in Trial Court Rules 17.01, *et seq.*

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 black ink, appearing to read "Ronald E. Wilson", written in a cursive style.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat