



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 23, 2015

Re: JIC Advisory Opinion 2015-02.

Dear

Your request for an advisory opinion was recently reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your question is as follows: You are an attorney who practices law in _____ County. As part of your practice, you perform pro bono legal work for the _____ County Commission primarily relating to real property questions. You also teach at _____ Community & Technical College. You have been appointed as Magistrate of _____ County effective April 1, 2015. You intend to engage in the limited practice of law after your appointment. You want to know whether you can: (1) prepare wills, deeds and landlord-tenant contracts as part of your limited practice; (2) continue to perform legal work for the County Commission on either a fee or pro bono basis; and (3) still teach on legal and non-legal matters at a collegiate level.

To address the question which you have raised, the Commission has reviewed Canons 1A, 2A and 3E(1), 4B and 4G of the Code of Judicial Conduct. Canon 1A provides:

An 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 2A states:

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 3E(1) states:

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. . . .

Canon 4B provides:

B. Avocational Activities. – A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

Canon 4G states:

G. Practice of law. – A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

Importantly, the provisions of Article VIII, Section 7 of the Constitution of West Virginia permit attorneys who are magistrates to practice law except to the extent prohibited by the West Virginia Legislature in W. Va. Code §§ 50-1-4 and 50-1-12. Therefore, the Constitution precludes a Canon 4G absolute bar of magistrates from the practice of law. *See Judicial Inquiry Commission v. Allamong*, 162 W. Va. 652, 252 S.E.2d 159 (1979). However, the Court also stated that the practice of law must not interfere with the full performance of a magistrate's duties. *Id.* The Court noted:

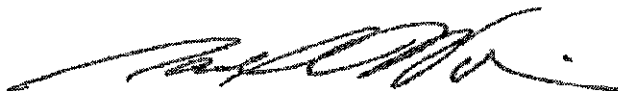
Having asked voters to elect him as magistrate, his first obligation is to that office because a magistrate is a judicial officer, he is subject to all the Canons of the Judicial Code of Ethics. . . . He must not, through his activities as an attorney, jeopardize his impartiality.

Id. at 661, 252 S.E.2d at 164.

Based upon the foregoing, you can engage in the limited practice of law within the parameters set forth by the Legislature and as long as it does not impede your service as a magistrate or violate the Code of Judicial Conduct. To that end, you may prepare wills and deeds and continue teaching at the collegiate level. Since one of your primary duties as a magistrate is to hear landlord/tenant disputes including but not limited to eviction proceedings and non-payment of rent, you should refrain from drafting rental agreements. Lastly, you are also precluded from performing any legal work for the County Commission while simultaneously serving as a magistrate.

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', with a stylized flourish at the end.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat