



**JUDICIAL INVESTIGATION COMMISSION**

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

March 10, 2015

Re: JIC Advisory Opinion 2015-05

Dear

Your request for an advisory opinion was recently reviewed by the Judicial Investigation Commission. You want to know if it is appropriate for the cohabitating partner of a Magistrate Assistant to be employed as a bail bondsman.

To address the question which you have raised, the Commission reviewed Canons 1A, 2A, 3C(5) and 3E(1)(c) 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 3C(5) provides:

A judge shall not require any personnel subject to the judge's direction to act contrary to any code of ethics applicable to the judge or to the personnel. . . .

Canon 3E(1)(c) states:

E. Disqualification.

(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, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than *de minimis* interest that could be substantially affected by the proceeding; . . . .

In JIC Advisory Opinion 2013-10, the Commission held that it was inappropriate for the spouse of a Magistrate to work as a bail bondsman in the magistrate's county of service or surrounding areas. In that opinion, we noted:

Magistrates' duties are many and varied. With respect to criminal cases, magistrates hear misdemeanors and conduct preliminary examinations in felonies. They also issue and record affidavits, complaints, arrest warrants, and search warrants, as well as set bail. Rule 5(f) of the Rules of Criminal Procedure for Magistrate Courts provides that "[t]he magistrate who originally sets bail retains jurisdiction with respect to bail only until the case is assigned. The assigned magistrate shall then have jurisdiction until the preliminary examination is held or waived, until the trial is held, or until the case is otherwise disposed." W. Va. Code § 50-1-12 states that no magistrate shall acquire or hold any interest in any matter which is before the magistrate court.

We also recognized that "[t]ypically a bail bondsman earns his or her money by charging a percentage fee of the bond amount he puts up for a defendant in a criminal case.

Magistrate assistants work closely with the magistrates in all aspects of their duties including the setting and enforcement of bonds. For that very reason,

it would not be proper for the cohabitating partner of a magistrate assistant to serve as a bail bondsman in Preston or surrounding counties. See also *JIC Advisory Opinion 2015-03* (a magistrate's spouse cannot be employed as a process server in the magistrate's jurisdiction); *JIC Advisory Opinion 8/19/2005* (appearance of impropriety would be created if a Magistrate's brother served as a bail bondsman in his court); and *JIC Advisory Opinion 8/30/2010* (appearance of impropriety if husband of magistrate served as a bail bondsman).

It is hoped that this opinion fully addresses the issues which you have raised. If there is any further questions 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:bjl