



JUDICIAL INVESTIGATION COMMISSION

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

August 6, 2015

Re: JIC Advisory Opinion 2015-10.

Dear

Your recent request for an advisory opinion to Counsel dated August 5, 2015, was reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: You have a public defender corporation in your county, which consists of two attorneys – the Chief Public Defender and an Assistant Public Defender. The Assistant Public Defender has been practicing law for approximately one and a half years. The Assistant Public Defender is currently representing a defendant who has been charged with felony incest.

The prosecutor in your jurisdiction received information that the Assistant Public Defender may be romantically involved with the client. The prosecutor advised you that he has filed an ethics complaint on the Assistant Public Defender with the Office of Lawyer Disciplinary Counsel. However, you have recently learned that ODC does not consider the matter filed until the attorney has been served with the complaint; and as of the writing of your request for formal advice, the assistant public defender has not received the complaint. You have already removed the Public Defender's Office from the defendant's case and assigned another lawyer to represent him.

You want to know if the Assistant Public Defender should be disqualified from all other criminal cases pending the outcome of the ethics complaint. In the alternative, you want to know if the prosecutor and the Assistant Public Defender should disclose the filing of the ethics complaint on the record and/or seek written waivers from other clients before moving forward as the assistant public defender assigned to their cases.

The longstanding principle in both judicial and legal ethics is that the mere filing of an ethics complaint against a judge or an attorney does not cause a *per se* disqualification. You were correct to remove the Public Defender's Office from representing the defendant in the incest case because of the inherent conflict associated with the actual representation. However, the Commission is of the opinion that you should take no wholesale action at this time. The purported complaint against the Assistant Public Defender contains accusations that are pending and have not been proven, and the attorney is still able to practice law. However, there may be other individual cases in which a motion for disqualification of the attorney may be an issue and you should evaluate each matter on a case by case basis.

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 long, sweeping horizontal line extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission