



**JUDICIAL INVESTIGATION COMMISSION**

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

September 1, 2015

Re: JIC Advisory Opinion 2015-13.

Dear

Your recent request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. You want to know if a Mental Hygiene Commissioner can serve on the U.S. Commission on Civil Rights State Advisory Committee (SAC) in West Virginia. You also want to know if it is permissible for a judicial employee of the Administrative Office of the Supreme Court of Appeals of West Virginia to be a SAC member.

The factual scenario giving rise to your request is as follows: The State Advisory Committee (SAC) in West Virginia would have 11-19 members serve on the board. The members must be U.S. Citizens and residents of West Virginia. SAC members should include persons with a diversity of skills and experiences, including but not limited to, social sciences research, legal research and analysis and statistical analysis as well as professions that include educators, lawyers, social scientists, researchers and news gatherers with knowledge of state and local government machinery and the public service sector.

The duties of committee members would include advising the U.S. Commission on Civil Rights in writing of any knowledge or information about alleged deprivation of the right to vote, legal developments constituting discrimination or denial of equal protection, and about matters of mutual concern in the preparation of reports that would go to the President and Congress. Additionally, SAC members would initiate and forward advice and recommendations to the Commission on matters the Committee studied and members would attend, as observers, any public hearing or conference the Commission may hold.

As you may be aware, the Supreme Court of Appeals of West Virginia is in the process of revising the Code of Judicial Conduct. The proposed revisions are currently out for public comment until September 8, 2015, and are likely to be finalized soon thereafter.

Proposed Canon 3.4 states that "[a] judge shall not accept appointment to a governmental committee, board, commission or other governmental position, unless it is one that concerns the law, the legal system or the administration of justice." Comment [3] of the proposed Canon states:

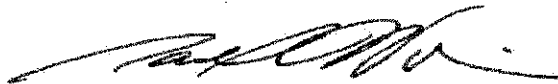
A judge's appointment to a government board or commission relating to the law, the legal system, or the administration of justice is generally not the kind of incompatible or time-consuming position prohibited under the dual office-holding provision of West Virginia Constitution, Article VIII, § 7. For example, judges and magistrates are appointed to a number of quasi-judicial boards and commissions. To avoid any potential incompatibility arising from boards and commissions carrying out functions of the executive or legislative branches of government, before accepting any appointment by the Governor or other official, a judge should obtain the approval of the Chief Justice.

Based upon the foregoing, the Commission believes that before a Mental Hygiene Commissioner could be appointed to the Advisory Committee the Chief Justice of the Supreme Court of Appeals of West Virginia must first approve the appointment.

The Judicial Investigation Commission is charged with giving advisory opinion to judicial officers. Therefore, the Commission cannot address your question whether a judicial employee could serve on the Advisory Committee. We suggest that you consult with the Administrative Director of the Courts to obtain his opinion on your question.

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 over a horizontal line.

Ronald E. Wilson, Chairperson  
Judicial Investigation Commission