



JUDICIAL INVESTIGATION COMMISSION

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

April 18, 2016

Re: JIC Advisory Opinion 2016-10.

Dear

Your request for an advisory opinion to Counsel was recently reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: On January 28, 2016, a young lawyer filed to run for the House of Delegates. On March 23, 2016, the lawyer applied for an open law clerk position with a Circuit Judge. On March 30, 2016, the lawyer interviewed with the judge. On April 4, 2016, the judge hired the young lawyer as his law clerk. The lawyer began his new job on April 8, 2016. On his first day of employment, the lawyer informed the judge that his name was on the May 2016 primary election ballot as a candidate for House of Delegates and that he intended to withdraw his name from consideration. On April 11, 2016, the lawyer informed the West Virginia Secretary of State's Office of his desire to withdraw his name from consideration for the May 2016 House of Delegates race. The Secretary of State's Office informed the lawyer that he could not withdraw his name from the ballot.¹ You want to know if the lawyer must now resign his position as law clerk.

To address your question, the Commission has reviewed Rule 4.5(A) of the Code of Judicial Conduct which provides that "[u]pon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold

¹ West Virginia Code § 3-5-11 states that the last day for a candidate to voluntarily withdraw his/her name from the primary ballot is the third Tuesday following the close of candidate filing. Thus, the last day for the lawyer to voluntarily withdraw his name from the primary ballot was February 16, 2016. After that deadline, withdrawals may occur only by the approval of the State Election Commission.

judicial office.” Comment [2] to the Rule states that “[t]he ‘resign to run’ rule ensures that a judge cannot use the judicial office to promote his or her candidacy.” Comment [1] notes that the “potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.”

This section of the Canon was extended to judicial employees by the Supreme Court in *Philyaw v. Gatson*, 195 W. Va. 474, 466 S.E.2d 133 (1995). It was again reinforced in JIC Advisory Opinion 3/15/2004, in which the Commission told a magistrate assistant that he/she must immediately resign as a judicial employee if he/she decided to run for a seat on the Board of Education.

There is no question that had the lawyer been working as a law clerk when he filed papers to run for the House of Delegates, he would have immediately had to resign as a judicial employee. In this case, the lawyer was not hired as a judicial employee until well after he filed to run for the House of Delegates and it was too late for him to voluntarily withdraw his name from the ballot. He promptly asked the Secretary of State’s Office to remove his name from the ballot but it declined to do so. Therefore, the Commission is of the opinion that in this particular instance the lawyer can continue to work as a law clerk for a circuit judge as long as he: (1) no longer campaigns for office; (2) takes down all campaign signs; (3) closes any election committee that he set up; (4) does not participate in any campaign interviews; and (5) if asked, publicly disavows his candidacy for office. Should the lawyer win the primary election for House of Delegates, he must decide on May 11, 2016, whether to continue on as a candidate in the November general election or keep his job as a law clerk. If the lawyer decides to continue on with his candidacy, then he must immediately resign as a judicial employee effective May 11, 2016.

The Commission hopes that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald E. Wilson", with a long horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission