



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 23, 2016

Re: JIC Advisory Opinion 2016-21.

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The facts giving rise to your request are as follows: You were not re-elected to your current post and will leave office on December 31, 2016. You plan on returning to the practice of law on January 1, 2017. You want to know if you are permitted to begin publicly advertising your new law practice before you leave office. You also want to know if you can mention mediation services in the advertisement. Lastly, you would like to know whether you would be permitted to mediate cases that you formerly presided over as a judge.

To answer your question, the Commission has reviewed Rules 1.2, 2.1, 2.11(A)(5) and 3.1(A) of the Code of Judicial Conduct which provides as follows:

Rule 1.2 Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Rule 2.1 Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

Rule 2.11 Disqualification

- (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: . . .
 - (5) The judge: (a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association; (b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy. . .

Rule 3.1 Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or the Code. However, when engaging in extrajudicial activities, a judge shall not:

- (A) Participate in activities that will interfere with the proper performance of the judge's judicial duties;

In 2015, the West Virginia Legislature changed the way judges are elected to the bench. Through 2014, judges were chosen by the people in partisan races during the general election held in November. Under the old system, the remainder of the term for judges who were not re-elected was approximately six weeks. Beginning this year, judges are chosen in nonpartisan races during the primary election held in May. Now, the remainder of the term for judges who are not re-elected is approximately seven and one half months. The Commission recognizes that some advertising venues, such as phone books or quarterly and annual publications, require early placement or the buyer may have to wait as long as a year before seeing their notice in the forum. Given that you are approaching the final quarter of your transition, the Commission believes that it would now be appropriate for you to start securing such advertising. You may also begin some

informational advertising – simply announcing your return to the practice of law, the types of law you plan to practice, and the location and phone number of your new office. Importantly, all advertisement must clearly state that your practice will not resume until after the start of the new year. You should be mindful that your judicial duties take precedence and your ads must be in conformance with the Code of Judicial Conduct.

Concerning mediation, Rule 42 of the Rules of Practice and Procedure for Family Court states that “[a]ll mediators shall be subject to . . . the Code of Judicial Conduct regarding disqualification.” The Commission is of the opinion that Rule 2.11(A)(5) prohibits you from mediating cases where you served as a judge. Therefore, you would not be able to mediate any cases in which you formerly presided over as judge.

We hope this opinion fully addresses the issue which you 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 horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat