



**JUDICIAL INVESTIGATION COMMISSION**

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

December 5, 2016

Re: JIC Advisory Opinion 2016-32

Dear Judge [REDACTED]:

Your recent request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: You are a senior status judge. In late June 2016, you also became employed as "of counsel" with the [REDACTED] office of a regional law firm and the focus of your practice is mediation. You have also maintained membership with the Virginia State Bar in an inactive judicial status. A member of the firm who is not licensed in Virginia has asked you if you could take steps to become an active member there in order to assist him in collection matters in that state for a local client. You want to know if you can appear before any tribunal in Virginia on behalf of the firm's client.

Application II of the Code of Judicial Conduct ("CJC") governs retired judges admitted to senior status. Section B provides that "[a] retired judge admitted to senior status but who engages in limited law practice is **not** required to comply with Rules 3.8 and 3.10" (emphasis added). CJC Rule 3.10 states that "[a] judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum."

West Virginia Code § 51-9-10, authorized the State Supreme Court to create a panel of senior judges and to promulgate rules governing the body. In a September 1994 Administrative Order, the Supreme Court of Appeals of West Virginia set forth various requirements for senior status judges. Section (a)(3)(B) of the Order provides in pertinent part:

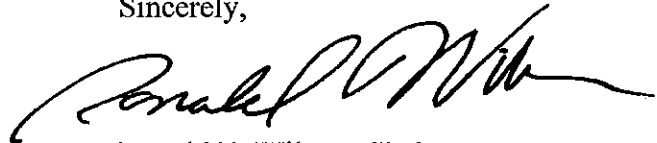
Engagement in a limited law practice (e.g., no association with a law firm, except if employed as “of counsel” or “special counsel,” or part-time law practice) shall not disqualify a retired judge or justice from eligibility for senior status. However, a retired justice or judge admitted to senior status shall be disqualified from assignment to duty in any circuit where he or she engages in practice, or from any matter in which the law firm in which he or she is employed as “of counsel” or “special counsel” is involved or has participated. For purposes of this rule, the terms “of counsel” or “special counsel” **shall mean employment by a law firm that does not include** (1) any partnership interest in the firm; (2) **appearance before any tribunal representing any client of the firm**; (3) work in the firm on a full time basis; and (4) a salary equivalent to or greater than any partner in the firm.

(emphasis added).

Based upon the foregoing, the Commission believes that you cannot maintain senior status and at the same time appear of counsel before any tribunal representing any client of the firm even in the State of Virginia. You may do one or the other but cannot contemporaneously engage in both activities. If you chose to represent clients on behalf of the firm, you must first resign as Senior Status Judge.

It is hoped that this opinion fully addresses the issue raised by you. 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

REW/tat