



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 15, 2016

Re: JIC Advisory Opinion 2016-33.

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows:

has asked you to participate in a brainstorming event concerning substance abuse. Participation in the group is on a volunteer basis. staff has informed you that there might be additional meetings after the takes office. You would like to know if you can accept the Governor-elect's invitation to participate in the forum.

The Commission has reviewed Article VIII, §7 of the West Virginia Constitution, Rule 3.4 and Comment [3] to Rule 3.4 of the Code of Judicial Conduct to address the question which you have raised. Article VIII, §7 of the West Virginia Constitution provides in pertinent part:

No justice, judge or magistrate shall hold any other office, or accept any appointment or public trust, under this or any other government; nor shall he become a candidate for any elective public office or nomination thereto, except a judicial office; and the violation of any of these provisions shall vacate his judicial office. No justice of the supreme court of appeals or judge of an intermediate appellate court or of a circuit court shall practice the profession of law during the term of his office, but magistrates who are licensed to practice this profession may practice law except to the extent prohibited by the Legislature.

Rule 3.4 of the Code of Judicial Conduct provides in pertinent part:

Rule 3.4 Appointments to Governmental Positions

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] to the Rule notes that “[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.”

Based upon the foregoing, the Commission believes that you can accept the invitation to participate in the brainstorming event. The Commission is mindful that Comment [3] to Rule 3.4 was drafted to address any ambiguity in Article VIII, §7 of the West Virginia Constitution. Together the Rule and the Comment make clear that the “other office or appointment” language of West Virginia Constitution, Article VIII, § 7 has no application to a judge’s incidental service on a government board or committee that is not a separate office or employment in conflict with judicial duties and obligations.” Clerk’s Notes on Rule 3.4.

The Commission believes the group may benefit from the wisdom of a judge who deals daily with the drug epidemic in West Virginia. 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 stylized flourish at the end.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/bjl