



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 4, 2017

Re: JIC Advisory Opinion 2017-23.

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. You want to know if you can concurrently serve as Magistrate and as a fiduciary commissioner for the _____ County Commission. According to you the main roles of a fiduciary commissioner are to send out letters to potential beneficiaries of estates at the beginning of probate, to supervise the executor or executrix throughout the process, to send quarterly reports on active cases, and to send the final waiver of settlement letters to beneficiaries at the time of the estate's settlement. For each estate, the fiduciary commissioner receives approximately \$500.00.

To address the questions, the Commission has reviewed Rule 3.8 of the Code of Judicial Conduct which provides in pertinent part:

Rule 3.8 – Appointments to Fiduciary Positions

- (A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.
- (B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward

becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

- (C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.
- (D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

The Comment to the Rule states:

A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than *de minimis*.

Rule 3.8 clearly forbids a judicial officer from serving as a fiduciary except in a very limited circumstance involving a family member and only if it does not interfere with his or her regular judicial duties. W. Va. Code § 44-3A-36 specifies the powers associated with fiduciary commissioner:

The fiduciary commissioners shall have general or limited supervision, as may be, of all fiduciary matters that are referred to them, and of the fiduciaries in charge thereof, and shall make all ex parte settlements of the accounts of such fiduciaries. Such commissioners shall have power to summon and compel the attendance of witnesses, to swear and examine witnesses, take their depositions and certify their testimony.

Fiduciary commissioners shall also report to and settle accounts with the county clerk. W. Va. Code § 44-3A-35. The Commission is of the opinion that these duties along with the numerous case conflicts they would create with your obligations as a magistrate are prohibited by Rule 3.8.

Based upon the foregoing, the Commission finds that you cannot concurrently serve as a magistrate and a fiduciary commissioner. It is hoped that this opinion fully

addresses the issues which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ronald E. Wilson', is positioned above the printed name.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat