



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
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Charleston, West Virginia 25304
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December 11, 2017

Re: JIC Advisory Opinion 2017-24.

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:

You have an elderly aunt who lives another county. A petition has been filed in that County to declare her a protected person. Her husband recently died. Neither your aunt nor your late uncle had any advance directives and no original Last Will has been found for your uncle. You are the only blood relative of your aunt who is under the age of 75 and who lives in close geographical proximity. The moving authorities on your aunt's petition and those involved in your uncle's estate have asked you to serve as Conservator for the former and as the Administrator for the latter. You do not propose to act as an attorney in the two capacities but only as the personal representative for each. You have also assured that the duties associated with each will not interfere in any way with your judicial duties. You want to know if you can serve in such capacities for your family members who reside(d) in a county where you do not sit as a judge and whether you may receive the statutorily mandated compensation of up to 5% of either estate.

To address the questions, the Commission has reviewed Rules 3.8 and 3.12 of the Code of Judicial Conduct which provide:

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.

Rule 3.12 – Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

The Comment to the Rule 3.8 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*.

Meanwhile, Comment [1] to Rule 3.12 notes that a judge is permitted to "accept . . . fees . . . for . . . extrajudicial activities provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities." Comment [2] states that "[c]ompensation derived from extrajudicial activities may be subject to public reporting."

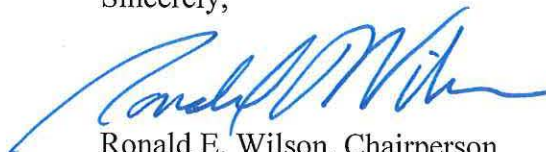
Rule 3.8 clearly forbids a judicial officer from serving as a fiduciary except in a very limited circumstance involving a family member and only if it does not interfere with his or her regular judicial duties. The conservatorship and administratorship involve your aunt and uncle, which fall under the definition of a member of the judge's family set forth in the Code to mean "a spouse, domestic partner, child grandchild, parent, grandparent, or **other relative or person with whom the judge maintains a close familial relationship**" (emphasis added). Typically, a close familial relationship extends to the "third-degree of relationship" which includes the following persons according to the Code: "great-grandparent, grandparent, parent, **uncle, aunt**, brother, sister, child,

grandchild, great-grandchild, **nephew** and **niece**" (emphasis added). Therefore, you would be able to serve in the fiduciary capacities requested pursuant to Rule 3.8.

Rule 3.12 also permits you to accept the statutorily mandated fee of up to 5% for your service. However, you are reminded, that pursuant to Rule 3.15, you must report any such compensation received on the extra-judicial compensation form.

Based upon the foregoing, the Commission finds that you can serve as conservator for your aunt and administrator for your uncle's estate and that you may be compensated for such pursuant to State law. The foregoing opinion addresses the issues which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,



Ronald E. Wilson, Chairperson
Judicial Investigation Commission

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