



JUDICIAL INVESTIGATION COMMISSION

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

January 26, 2018

Re: JIC Advisory Opinion 2018-03.

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. You want to know whether your magistrate assistant would have to resign her position if she decided to run for Circuit Clerk in the 2018 election. To answer your question, the Commission has reviewed Rule 4.5(A) of the Code of Judicial Conduct which states that "[u]pon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office." Comment 1 to the Rule notes:

In campaigns for nonjudicial elective public office, candidates may make pledges, promises or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaign is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

The Commission also reviewed Rule 2.12 of the Code of Judicial Conduct which states that "[a] judge shall require court staff, court officials and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code." Comment [1] to this Rule provides:

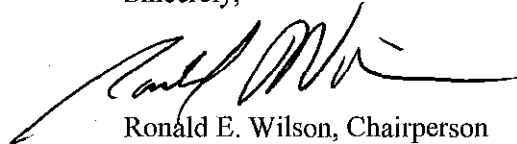
A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf

or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

In a long line of advisory opinions, the Commission has held that senior status judges, magistrates, and part-time mental hygiene commissioners must resign their positions immediately if they choose to run for election to non-judicial offices such as county commissioner, prosecutor and member of the House of Delegates. In a JIC Advisory Opinion dated March 15, 2004, the Commission held that a magistrate assistant would have to immediately resign his/her position in order to run for a seat on a County Board of Education. This opinion was based in part on *Philyaw v. Gatson*, 195 W. Va. 474, 466 S.E.2d 133 (1995) in which the Supreme Court of Appeals of West Virginia held that a requirement that a magistrate assistant resign her judicial office upon becoming a candidate for Circuit Clerk was a reasonable condition of judicial employment.

Based upon the foregoing, the Commission is of the opinion that your magistrate assistant must immediately resign her position if she elects to run for Circuit Clerk of Wayne County. 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