



JUDICIAL INVESTIGATION COMMISSION

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

February 6, 2018

Re: JIC Advisory Opinion 2018-04.

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. You want to know if you can serve as an Executor/Administrator of your great nephew's estate. You are close with the boy's parents and had a familial relationship with your great nephew. You do not propose to act as an attorney but only as the personal representative. You have also assured that the duties associated with personal representative will in no way interfere in any way with your judicial duties. You also want to know if you may receive the statutorily mandated compensation of up to 5% for your service.

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 – Appointment to Fiduciary Positions

- (A) A judge shall not accept an 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 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 "compensation derived from extrajudicial activities may be subject to public reporting."

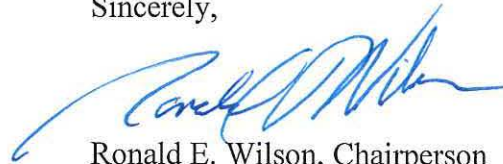
Rule 3.8 clearly forbids a judicial officer from serving as a fiduciary except in a very limited circumstance involving a family member and only if it does not interfere with his or her regular judicial duties. The situation involves your great nephew which falls outside the definition of a member of 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." However, in JIC Advisory Opinion 2014-01, the

Commission extended "close familial relationship" to an extended family member with whom a judge has a close relationship or a friend who the judge treats like a member of the family.

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, a majority of the Commission finds that you can serve as executor for your great nephew's estate and that you may be compensated for such pursuant to State law. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,



Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat