



JUDICIAL INVESTIGATION COMMISSION

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

June 12, 2018

Re: JIC Advisory Opinion 2018-13.

Dear Ms. _____ :

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The facts giving rise to your request are as follows: You are running in a contested race for Judge in the November 2018 election. When you were in high school, your older brother was murdered in _____ County. The man who killed your brother was convicted of first-degree murder in _____ County Circuit Court. The case was reversed by the State Supreme Court upon appeal. Following a second trial, the defendant was again convicted of first-degree murder and sentenced to life with mercy. The defendant is currently has another habeas petition pending in _____ County Circuit Court and was recently denied parole. The murder of your brother has played a significant role in your career path and your life and you would like to highlight your story in television, radio and social media as part of your campaign. You want to know if mentioning this in your campaigns is permissible pursuant to the Code of Judicial Conduct.

To address the questions, the Commission has reviewed Rules 3.11(B) and (C) of the Code of Judicial Conduct which provide:

Rule 4.1 – Political and Campaign Activities of Judges and Judicial Candidates in General.

- (A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

- (10) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or
- (11) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

Comment [11] to the Rule states:

The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide votes with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

Meanwhile, Comment [13] notes:

The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

Based upon the foregoing and because the defendant is a repeat habeas petitioner in County Circuit Court, the Commission is of the opinion that it would be improper for you to discuss the case in any great detail. However, the Commission believes that it would be appropriate for you in general terms, without giving names or very many facts, to mention that your brother was murdered, that this lead you to become a lawyer, and that it is a motivating force behind your decision to run for judge.

Thank you for your inquiry. If there is any further question regarding this matter, please do not hesitate to contact the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald E. Wilson", with a stylized flourish at the end.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat