



JUDICIAL INVESTIGATION COMMISSION

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

August 2, 2018

Re: JIC Advisory Opinion 2018-16.

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The facts giving rise to your request are as follows:

Your law clerk has worked for you since January 2016. She plans to run for a partisan nonjudicial office in 2020. You want to know if she would be required to immediately resign her position as your law clerk if she openly discusses her plan to run for the elected position and/or files pre-candidacy papers.

To address the questions, the Commission has reviewed Rule 4.5(A) of the Code of Judicial Conduct which provides:

- (A) Upon 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 campaigning 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 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 candidate.

Meanwhile, Comment [2] states that the “resign to run” rule ensures that “a judge cannot use the judicial office to promote his or her candidacy.”

The “resign to run” rule was extended to judicial employees by the Supreme Court of Appeals of West Virginia in *Philyaw v. Gatson*, 195 W. Va. 474, 466 S.E.2d 133 (1995). It was also reinforced in a JIC Advisory Opinion issued on March 15, 2004, in which a magistrate assistant would be required to immediately resign his/her position upon becoming a candidate for a seat on the local school board.

Importantly, the definition of “judicial candidate” as set forth in the Code of Judicial Conduct is instructive as to when a person becomes a candidate for election to any office. The provision states that “[a] person becomes a candidate for judicial office as soon as he or she **makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office**” (emphasis added).

Based upon the foregoing, your law clerk would be required to immediately resign her position if and when she first publicly discusses her decision to run for nonjudicial office or files pre-candidacy papers with the appropriate election authority.

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

Sincerely,



Ronald E. Wilson, Chairperson
Judicial Investigation Commission