



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 21, 2018



Re: JIC Advisory Opinion 2018-18.

Dear [REDACTED]

Your August 6, 2018 request for an advisory opinion was recently reviewed by the Judicial Investigation Commission. The facts giving rise to your request are as follows:

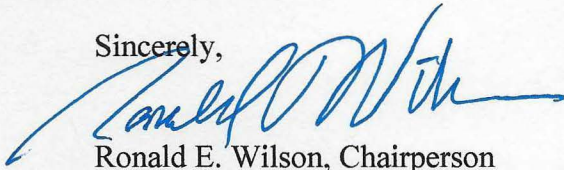
In November 2016, you were elected Judge of the [REDACTED] Judicial Circuit, and you took office on January 1, 2017. On or about February 9, 2017, you were suspended from your judgeship for two years without pay in [REDACTED] for violating Rules 4.1(A)(9), 4.2A(1) and 4.2(A)(4) of the Code of Judicial Conduct. You were also ordered to pay fines totaling \$15,000.00 and costs in the amount of \$2,862.08 for the disciplinary proceeding. As of mid-August, 2018, you still owe \$10,000 in fines. You are set to resume your judgeship on or about February 10, 2018.

You have crafted a six month transition plan that you want to know if you can implement prior to resuming your judgeship. The plan calls for you to (1) meet with the Senior Status Judge presiding over your circuit on a regular basis to discuss issues, ongoing cases and docketing; (2) to maintain regular contact with the Judge's administrative assistant regarding day-to-day Court matters; (3) to review the Court's calendar and docket and stay apprised of upcoming important dates such as grand jury and petit jury orientation; (4) to stay apprised of the docket to assure a smooth transition and monitor hearings and proceedings as appropriate. You want to begin interviewing for anticipated staffing changes and to meet with various entities who regularly appear in Court such as the prosecutor, the public defender, and DHHR case workers to discuss case management, case flow and docketing. You also want to meet with the three magistrates, day report staff, and probation staff to discuss any pertinent issues.

The Commission has considered your request and is of the opinion that you can take no such action while you are suspended from your judgeship. *Black's Law Dictionary* defines "suspension" as "the temporary cutting off or debarring one, as from the privileges of one's profession." The two-year suspension imposed on you by the Court for serious misconduct occurring during your campaign for judge would have little meaning if you were allowed to participate in the proposed activity. When a judge engages in wrongdoing, he/she must expect to fully pay the piper. Accordingly, the Commission finds that you cannot engage in any transition activity prior to the completion of your suspension. Furthermore, the Commission is of the opinion that you cannot retake the bench until your fine is paid in full.

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 long horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat



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August 22, 2018

The Honorable Dan Ferguson
Magistrate of Cabell County
Cabell County Courthouse
750 Fifth Avenue
Huntington, WV 25701

Re: Complaint No. 37-2018

Dear Magistrate Ferguson:

The Judicial Investigation Commission ("Commission") considered the above-captioned complaint against you during its August 17, 2018 meeting. The Commission was presented with the following information:

On March 1, 2018, you signed and issued an arrest warrant for the misdemeanor offense of first-offense violation of a personal safety order ("PSO") for Paula Johnson. The case was styled *State v. Johnson*, Cabell County Magistrate Court Case No. 18-M06M-00986. On March 31, 2018, Ms. Johnson was arrested on the warrant and spent the night in jail before being released by Magistrate Baumgardner the next day. The jail release order stated: "Never a Personal Safety Order in Effect."

On April 11, 2018, Ms. Johnson filed an ethics complaint against you alleging violations of Rule 1.1, 1.2 and 2.5(A) of the Code of Judicial Conduct. You subsequently replied to the allegations contained in the complaint and stated:

On March 1, 2019, Kacey Peyton came to my office to file a PSO Violation on Paula Johnson for alleged breach for the conditions. I had knowledge of an ongoing dispute between Ms. Payton and Ms. Johnson and was aware that there were cross PSO's filed one against the other. However, I did not know of the ultimate outcome of the original petitions. In processing the alleged violation paperwork, my assistant did not verify the current status of the PSO. Based on her knowledge of the prior filings between the two parties and verbal assertions of Ms. Peyton, my assistant

presumed the PSO to be in effect and processed the violation accordingly, upon which I signed off on. Upon investigation it turns out that Magistrate Baumgardner dismissed both the cases and issued verbal warnings to both parties to stay away from one another on October 29, 2017. Since this matter, my office has instituted a new policy and procedure to ensure that this inaccuracy does not occur again.

The Commission has considered the following authority in determining that you violated the Code of Judicial Conduct:

Rule 1.1 of the Code of Judicial Conduct provides that “[a] judge shall comply with the law, including the West Virginia Code of Judicial Conduct.”

Rule 1.2A of the Code of the Judicial Conduct cautions judges to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and to “avoid impropriety and the appearance of impropriety” in all activities. The Commentary to this provision notes that judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Rule 2.5(A) of the Code states that “[a] judge shall perform judicial and administrative duties, competently and diligently.” Comment [1] notes that “[c]ompetence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge’s responsibilities of judicial office.”

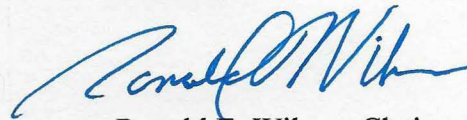
A judge is required to follow appropriate procedures particularly when an individual’s liberty interests are at issue. Common appropriate procedures should include routinely checking the status of a personal safety order to see if it is still in effect before issuing an arrest warrant for a violation thereof. You should never just rely on a Complainant’s word before issuing a warrant in such a case. Whether or not your assistant failed to determine the validity of the PSO is irrelevant. You are ultimately responsible for what occurs in your court. The buck clearly and unequivocally stops with you. You failed in your duty, and therefore, you alone are responsible for Ms. Johnson wrongfully spending the night in jail.

Ordinarily, the Commission would have the right to admonish you for such conduct. However, you are a relatively new magistrate without a lot of experience, you have no prior disciplinary record, and you have taken new measures to ensure that the error never happens again. Therefore, the Commission has decided to warn you that any

Magistrate Ferguson Letter
JIC Complaint No. 37-2018
August 22, 2018
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future such conduct will not be tolerated and could result in your being charged with violations of the Code of Judicial Conduct. As no further action is warranted, the complaint against you is dismissed, and the file in this matter has been closed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald E. Wilson", is written over a horizontal line.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW:tat