



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 24, 2019

Re: JIC Advisory Opinion 2019-04.

Dear Judge

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

A respondent father in an abuse and neglect case tested positive for methamphetamine. During the course of the preliminary hearing, you inquired if the respondent father was employed. His attorney said "no," but had a job that would start in two weeks. Upon further inquiry, counsel advised that the respondent father was going to work at a jail as a corrections officer. You then directed the respondent father to inform the jail of the pending abuse and neglect case and his positive test for methamphetamine.

You are concerned about the respondent father's use of controlled substances as it relates to his pending employment. You want to know if, in light of the provisions of West Virginia Code 49-5-101 as to confidentiality, whether you may disclose to the appropriate authority the respondent father's use of methamphetamine. You also want to know what action, if any, you can take to enforce the ordered disclosure.

To address the questions, the Commission has reviewed Rule 3.5 of the Code of Judicial Conduct which states:

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

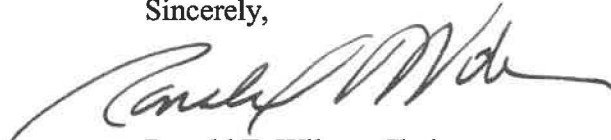
In JIC Advisory Opinion 2015-07, the Commission addressed the former equivalent to Rule 3.5 and held that a judge who learned of a fugitive's cell phone number and address during a judicial hearing was not permitted to make that information known to law enforcement since

it was non-public information that he acquired in a judicial capacity and the reason for the proposed revelation was unrelated to his judicial duties.

Based upon the foregoing, the Commission is of the opinion that you cannot disclose the information developed at the hearing to the respondent father's future employer. However, you appropriately directed the respondent father to inform the jail of the pending abuse and neglect case and his positive test for a controlled substance. At the next hearing, you can place him under oath and ask him whether he has done what he was directed to do. You can also ask him to provide requisite proof of the same.

It is hoped that this opinion fully addresses the issues which you have raised. 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