



**JUDICIAL INVESTIGATION COMMISSION**

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

March 26, 2019

Re: JIC Advisory Opinion 2019-07.

Dear \_\_\_\_\_

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission at its March 22, 2019 meeting. The factual scenario giving rise to your request is as follows:

You are one of three Mental Hygiene Commissioners ("MHC") in Harrison County. Each MHC reports to a specific Circuit Court Judge. One MHC is a solo practitioner. The other MHC and you are partners in two separate law firms. Each MHC hears guardian/conservator cases on a rotating basis and presides over mental hygiene proceedings when available during the day. Each MHC is also on-call for after-hours hearings four (4) months out of the year.

You want to know if other lawyers in your firm can file guardianship cases in Harrison County as long as they are heard by another MHC. In *JIC Advisory Opinion 2014-21*, the Commission said that a co-worker may appear in front of another MHC in guardian/conservator cases as long as (1) the appointment order limits the MHC's authority to preside only over involuntary hospitalization hearings; (2) the MHC has not acted as a fact-finder in any guardianship/conservator matter; and (3) the MHC disqualifies himself whenever a conflict develops."

Based upon the foregoing, the Commission is of the opinion that an appearance of impropriety occurs whenever a law partner of an MHC appears in front of other Commissioners in guardianship cases without having first satisfied the prerequisites of *JIC Advisory Opinion 2014-21*. Rule 1.2 of the Code of Judicial Conduct states that "[a]

judge shall act at all times in a manner that promotes public confidence in the independence,

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integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Comment [3] to the Rule notes that “[c]onduct that compromises or appears to compromise the independence, integrity and impartiality of a judge undermines public confidence in the judiciary.” Comment [5] sets forth the test for appearance of impropriety – “whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.” Given your scenario, reasonable minds could perceive that the MHC presiding over the case lacks impartiality because his fellow MHC works for the same firm. Therefore, the Commission finds that a co-worker of an MHC can only appear in guardianship cases if the parameters contained in *JIC Advisory Opinion 2014-21* are met.

It is hoped that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission if you have any other questions regarding this matter.

Sincerely,

A handwritten signature in blue ink, reading "Alan D. Moats", with a horizontal line extending to the right.

The Honorable Alan D. Moats, Chairperson  
Judicial Investigation Commission

ADM/tat