



**JUDICIAL INVESTIGATION COMMISSION**

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

May 16, 2019

Re: JIC Advisory Opinion 2019-13

Dear

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:

While serving in the Peace Corps, your son met and married a woman from Indonesia. Your son and daughter-in-law are now living and working in West Virginia. You have visited the couple's various homes on many occasions since they moved back from Indonesia about four years ago. For a period of time, the couple even lived with you after your son graduated from law school and was studying to take the bar exam.

The United States Citizenship and Immigration Services ("USCIS") has requested documentation and two affidavits to establish that your son and daughter-in-law entered into the marriage in good faith, reside together under one roof, and have a bona fide marital relationship. You have been asked to provide one of the required affidavits and possibly testify on the couple's behalf in federal court. With respect to the affidavit, you must include your date and place of birth, address, and other information concerning yourself in support of the marital relationship.

You want to know whether you can submit the affidavit on behalf of your son and daughter-in-law. You have also asked whether you can submit the affidavit on judicial letterhead. Lastly you want to know whether you can testify, if need be, on behalf of the couple in court.

To address your questions, the Commission has reviewed Rules 1.3 and 3.3 of the Code of Judicial Conduct. Rule 1.3 provides that "[a] judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judges or others." Comment 2 to the Rule notes that "[a] judge may provide a reference or recommendation for an individual based on the judge's personal knowledge. The judge may use official letterhead if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of judicial office."

Rule 3.3 states that “[a] judge shall not testify as a character witness in a judicial, administrative or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding except when subpoenaed to testify. The comments to the Rule provide:

- [1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.
- [2] Whether or not the demands of justice indicate the judge should testify depends on the nature and depth of the judge's actual awareness of the character of the party for whom the judge would testify. It also depends upon the actual necessity that it be the judge, as opposed to another possible witness who is called to testify. Only if the judge is in a unique position to offer meaningful testimony about the individual should the judge testify.

Based upon the foregoing, the Commission is of the opinion that you can submit an affidavit and testify in court about the validity of your son and daughter-in-law's marriage since you are in the unique position of having such knowledge by virtue of your familial relationship and you would be providing factual information instead of character evidence. However, you should not use your judicial letterhead in submitting the affidavit because it could create a perception, however wrong it may be, that you are attempting to use your position to benefit the couple with the USCIS.

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,



The Honorable Alan D. Moats, Chairperson  
Judicial Investigation Commission

AMD/tat