



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 12, 2019

Re: JIC Advisory Opinion 2019-18.

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: On July 6, 2011, during the summer before your third year of law school, you received a certification from the Supreme Court of Appeals of West Virginia which stated that you had "complied with all of the requirements of Rule 10, et seq., of the Rules for Admission to the practice of Law, Relating to Legal Assistance by Law Students to Persons Unable to Pay for Legal Services, and that [your] supervising attorney is Mark Plants, Prosecuting Attorney of [Kanawha County]." You then spent the summer as a Rule 10 Law Student working at the Prosecutor's Office. You graduated from law school in May 2012. You did not receive another Rule 10 certification after graduating from law school. Rule 10 provides in pertinent part:

Rule 10.0 Rule relative to legal assistance by law students to persons unable to pay for legal services.

- (b) Scope of rule. — An eligible law student may appear, with a supervising attorney, in any court or before any administrative tribunal in this State on behalf of the State of West Virginia or any indigent person if the person on whose behalf the student is appearing has indicated in writing his or her consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:

...

2. *Criminal and other matters.* — In all criminal and related matters, the supervising lawyer must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted. This provision shall apply to all matters in which the minimum due process requirements approximate the requirements of criminal cases. When a student represents the State, the supervising lawyer shall be the prosecuting attorney or his or her designated assistant prosecuting attorney.

...

Rule 10.1 Requirements and Limitations.

In order to make an appearance pursuant to this rule, the law student must:

- (a) Be enrolled in a law school approved by the American Bar Association, or its equivalent, or have graduated from such school within the law six months, provided the student complies with Rule 10.2(a).

...

Rule 10.2 Certification.

The law school dean or his or her designee shall certify that the student has complied with 10.1(a), (b), and (c) and the certification:

- (a) Shall be filed with the Clerk of the Supreme Court of Appeals and unless it is sooner withdrawn, it shall remain in effect . . . until November 15th for a student sitting for the July bar examination, until a student has been notified that her or she has not achieved a passing score on the bar examination . . . **In order to be eligible for appearance under this rule, the law student must sit for the bar examination immediately following his or her graduation from law school.** Nothing in this Rule shall be construed to allow or permit a student to appear, participate or engage in activities beyond those described in Rules 10.0, et seq., and, particularly, as described in Rules 10.0(b) and 10.3(a) and (b).

(emphasis added).

You did not take the July 2012 bar examination. In fact, the very first time you sat for the bar examination was in February 2013. While awaiting the results of the examination, you were hired as a full-time “assistant prosecutor” in Kanawha County on March 4, 2013. Apparently both the prosecutor’s office and you were under the mistaken belief that you could practice pursuant to Rule 10 while awaiting your results. However, you could not because you did not comply with the Rule 10.2(a) requirement that you take the bar examination immediately following graduation. A short time after you were employed as an “assistant prosecutor,” you were notified that you did not pass the bar examination, and the prosecutor’s office had no choice but to terminate your employment.


In 2019, you were appointed to serve as Magistrate. You officially took office on April 11, 2019. You have decided to run in the 2020 election for your seat. In your advertisement you use the slogan “The Right Experience, The Right Choice.” Directly underneath the slogan, you list your experience including that you worked as an “assistant prosecutor.” You want to know if you can state that you were an “assistant prosecutor” since you were employed as such but have never been a licensed practicing attorney.

To address the questions, the Commission has reviewed Rules 4.1(A)(9) of the Code of Judicial Conduct which states that “a judge or judicial candidate shall not knowingly, or with reckless disregard for the truth, make any false or misleading statement.” Comment [7] to the Rule notes that “[j]udicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees.”

Based upon the foregoing, the Commission finds that you cannot use the term “assistant prosecutor” in your campaign advertisements since you never served in that capacity. You could not have served under Rule 10 when you were hired full-time by the office in March 2013 because you did not take the July 2012 bar examination in violation of Rule 10.2. You also never passed the bar exam and have never been licensed to practice law – two of the essential requirements to hold the position of assistant prosecutor. Therefore, it would be a material misrepresentation for you to claim that you served as an assistant prosecutor when you could not have done so. It also leaves the public with the mistaken impression that you have a license to practice law in West Virginia when you have never passed the bar exam. Therefore, you cannot state that you served as an assistant prosecutor but you may say that you interned or clerked at the prosecutor’s office.

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 blue ink, appearing to read "Alan D. Moats", with a long horizontal flourish extending to the right.

Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat