



JUDICIAL INVESTIGATION COMMISSION

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

November 20, 2019

Re: JIC Advisory Opinion 2019-25

Dear Justice :

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:

You are running in the May 2020 election for Justice. Meanwhile, the Court has recently hired a full-time photographer. When the Justices attend official events, the photographer is available and records the event through photographs. These photographs are then posted to the Supreme Court website for use by anyone who may wish to take advantage of their availability. The only limitation placed on these photographs is that they cannot be used for commercial purposes. You want to know if you can use these photographs for campaign purposes.

To address your question, the Commission has reviewed Rules 4.1(A)(3) and (8) of the Code of Judicial Conduct which state:

- (A) Except as permitted by law or by Rules 4.2, 4.3 and 4.4, a judge or judicial candidate shall not:
 - (3) publicly endorse or oppose a candidate for any public office; . . .
 - (8) require court staff to participate in a campaign for judicial office, or use court resources in a campaign for judicial office; . . .

Since the photographs are available in the public domain for anyone to use, the Commission is of the opinion that you may utilize them in your campaign and that such activity would not violate Rule 4.1(A)(8) of the Code of Judicial Conduct. However, you must remove any judges or other candidates from the pictures so there is no question about endorsement/opposition to or for any candidate, including you, in the photograph. Alternatively, if you use a photo in its entirety you must include a disclaimer on the campaign material in print large enough to see that "the photo is from the public domain and is not indicative of any endorsement or opposition by or for another judge or candidate depicted therein" or words to that effect.

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,



Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat