



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 29, 2020

Re: JIC Advisory Opinion 2020-02.

Dear Mr. _____ :

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 senior status magistrate has decided to run for the position of magistrate in the May 2020 Election. In 1998, the then Administrative Director issued Memorandum No. _____ which stated that a senior status judge or magistrate could not run for either a judicial office or a non-judicial office in an election. The Memorandum further stated that "a person attaining senior status would need to be removed from senior status if election to any post is sought." In reaching this conclusion, the then Administrative Director relied on former Canon 5A(2) of the Code of Judicial Conduct which stated:

A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

You want to know if the senior status magistrate has to resign in order to run for judicial office in the upcoming election.

To address your question, the Commission has reviewed Rule 4.5 of the current Code which states:

- (A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.

The Commission has long held that the resign to run rule as it is known applies only to judicial officers who run for non-judicial positions. Judges who run for other judicial positions as set forth in the Code¹ can keep their current positions and simultaneously seek office. A senior status judicial officer is a judge within the meaning of the Code.² Therefore, a senior status judge who runs for judicial office may retain his or her current position. The senior status judge must only resign his/her office if he/she were to run for a non-judicial office. To the extent that Memorandum is inconsistent with this position it should be rejected.

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

cc: ; Magistrate Court Services Manager

¹ See Code of Judicial Conduct Applications I through V.

² See Code of Judicial Conduct Application II.