



**JUDICIAL INVESTIGATION COMMISSION**

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

June 29, 2020

Re: JIC Advisory Opinion 2020-16

Dear Magistrate-Elect :

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission at its June 26, 2020 meeting. The facts giving rise to your question are as follows:

You ran for Magistrate in the June 2020 election. You won and are set to take office on January 1, 2021. Prior to running for office you owned a bail bonding company in \_\_\_\_\_ County and served as a bail bondsman in the jurisdiction in which you will now be a Magistrate. You quit taking any bonds after March 15, 2020 to try to prevent any further issues pending the outcome of the election. However, you remain on all outstanding bonds that you wrote prior to that time. You want to know if as a Magistrate-Elect you are able to remain on the current bonds of defendants that you have posted in \_\_\_\_\_ County. You also want to know whether you can remain on the bonds after taking office and what impact your prior service as a bail bondsman would have on cases before you as a magistrate.

To address your question, the Commission has reviewed W.Va. Code § 50-1-12 which provides in pertinent part:

Magistrates shall be subject to and shall abide by the code of judicial ethics as adopted and amended by the Supreme Court of Appeals. In addition to such conduct as may be regulated by the rules of the Supreme Court of Appeals, no magistrate, magistrate court clerk or magistrate court deputy clerk or magistrate assistant shall:

- (a) Acquire or hold any interest in any matter which is before the magistrate court; . . .
- (c) Act as agent or attorney for any party in any proceeding in any magistrate court in the state; or
- (d) Engage in, or assist in, any remunerative endeavor, except the duties of his office, while on the premises of the magistrate court office.

Any person who violates the provisions of this section shall be guilty of official misconduct and shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500.

The Commission has also examined Rules 3.11(B) and (C) of the Code of Judicial Conduct which state:

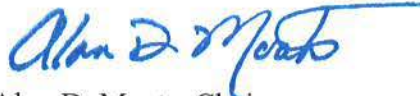
- (B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:
  - (1) a business closely held by the judge or members of the judge's family; or
  - (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
- (C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:
  - (1) interfere with the proper performance of judicial duties;
  - (2) lead to frequent disqualification of the judge;
  - (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; . . .

Based upon the foregoing, under no circumstances can you own or operate a bail bonding company while simultaneously serving as a magistrate nor can you be employed as a bondsman for another company during your tenure as a judicial officer. Therefore,

you cannot remain on any bonds after you are sworn into office. The Commission is also of the opinion that you must immediately begin the process of divesting yourself of your bail bonding company by consulting with the Chief Judge of the Circuit about the process to secure bail for your clients as soon as practicable. To that end, the Commission is also of the opinion that you should refund any monies paid to you by any persons on bond to help them secure new bonds. After all, it was your decision to run for Magistrate which placed their bonds and their freedom pending the outcome of their cases in question. The Commission also wishes to inform you that you must disqualify yourself from presiding over any matter in which you posted bond.

It is hoped that this opinion fully addresses the issue raised by you. 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