



**JUDICIAL INVESTIGATION COMMISSION**

City Center East - Suite 1200 A  
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Charleston, West Virginia 25304  
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September 9, 2020

Re: JIC Advisory Opinion 2020-20

Dear Magistrate-Elect :

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The facts giving rise to your question are as follows:

You were elected Magistrate of County in the June 2020 election and take office on January 1, 2021. You currently work as a bail bondsman for a bail bonding company and have been employed by them since you originally retired as a Magistrate in 2017. You want to know if you can continue to work as a bail bondsman until you take the oath of office as Magistrate.

To address your question, the Commission has reviewed Rules 1.2 and 3.1 of the Code of Judicial Conduct which state:

**Rule 1.2 – Confidence in the Judiciary**

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

**Rule 3.1 -- Extrajudicial Activities in General**

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;

- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; . . . .

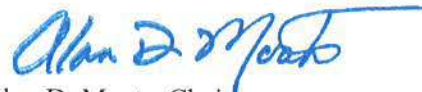
The Comments to these Rules are instructive. Comment [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.” Comment [2] provides that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Comment [4] states that “[j]udges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.” Comment [5] provides:

Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

In JIC Advisory Opinion 2020-16, the Commission advised a magistrate-elect who owned a bail bonding business that he/she “must immediately begin the process of divesting” himself/herself of his/her company. The Commission noted that it was the magistrate-elect’s “decision to run for Magistrate which created the conflict” and therefore it was his/her duty to immediately divest himself/herself of the bail bonding business.

Based upon the foregoing, the Commission is of the opinion that you must immediately resign your position as a bail bondsman to avoid any appearance of impropriety and to prevent any further disqualification on cases you would ordinarily be required to preside over as a magistrate. 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