



JUDICIAL INVESTIGATION COMMISSION

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

December 18, 2021

Re: JIC Advisory Opinion 2020-28.

Dear Magistrate-Elect _____ :

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 presently serving as Deputy Director of the _____ County Office of Emergency Services/911. You want to know if after taking office as a magistrate you can simultaneously serve as an emergency medical technician (“EMT”) and volunteer firefighter. Your local hospital has entered into an agreement with the fire department to reimburse for any medical calls and you in turn would receive \$25.00 per call as an EMT. According to you, you have handled approximately ten to twelve such calls a year for the past five years. You indicated that as a volunteer firefighter you average fifty calls a year. You also stated that there is a continuing need in your small community for EMTs and volunteer firefighters.

To address the question you raised, the Commission has reviewed Rules 1.2 and 3.1(A), (B) and (C) 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 the Rules are instructive. Comment [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by . . . conduct that creates an appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.” Comment [2] notes 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} provides that “[c]onduct that comprises or appears to compromise the independence, integrity and impartiality of a judge undermines public confidence in the judiciary.”

Based upon the foregoing, the Commission finds that you cannot serve as an EMT or volunteer firefighter while concurrently serving as a magistrate. You must remember that your judicial duties take precedence over all other activities. EMTs and volunteer firefighters are regularly called as witnesses in criminal and civil cases involving injuries to a person or damage to property. Therefore, the positions could result in your frequent disqualification from presiding over such cases as a Magistrate. Moreover, service as an EMT/volunteer firefighter could lead the public to conclude, however wrong it may be that you are biased in favor of cases involving first responders and that you may unfairly give them more weight and credibility whenever they testify in a proceeding before you because you all serve together.

In most communities, particularly those that are more rural, first responders consisting of police, firemen and EMTs are very intertwined. They work side by side and whether involved in a particular case or not they tend to have intimate discussions and become knowledgeable about local emergency events. In many communities, the fire department and police are housed in the same building. Often a volunteer fire department is closely connected to a paid fire department or is funded in part by a municipality or county commission. They also regularly engage in public fundraising, which you would be unable to do pursuant to other provisions of the Code. Therefore, it is the decision of the Commission that you are precluded from serving as an EMT or volunteer firefighter while simultaneously serving as a judge. You are further advised that this decision is consistent with JIC Advisory Opinions 2019-03 and 2013-01.

Please do not hesitate to contact the Commission should you have any other questions or need further information.

Sincerely,


Alan D. Moats, Chairperson
Judicial Investigation Commission