



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 21, 2021

Re: JIC Advisory Opinion 2021-03.

Dear Magistrate :

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:

In addition to serving as a Magistrate, you are also an ordained minister. As a magistrate you have no authority to perform marriages. According to statute, only Family Court Judges, Circuit Judges and Supreme Court Justices may perform marriages. Your ability to perform a wedding comes solely from being an ordained minister. At one time you were advised by a former Administrative Director of the Supreme Court of Appeals of West Virginia that you could perform weddings at the Courthouse on your lunch hour or during a regularly scheduled break. The only caveat was that you must not refuse to marry any couple who could lawfully marry pursuant to West Virginia Law. According to you, the former Administrative Director never mentioned whether or not you could accept a gratuity or payment for the service. This is the first time you have addressed the issue with the Commission, and you want to know if you can continue to provide the service at the Courthouse.

The Commission has reviewed Rules 3.1(A), (B) and 3.7 of the Code of Judicial Conduct and JIC Advisory Opinion 2021-01 to address the question which you have raised. In the recently released opinion, we told a magistrate candidate that he could continue to serve as a pastor of a small church even if he was appointed to serve as a

judge. However, the Commission cautioned the magistrate candidate that “as with any outside employment” his judicial duties take precedence over any other activity. The Commission also warned the magistrate candidate “against any temptation to conduct your ministry from the bench or courthouse. It is imperative that there be a clear separation of church and state.”

Based upon this, you must not perform any more weddings at the Courthouse since your only basis for doing so derives from your ordination as a minister. If you want to marry a couple on your lunch break or at any other time, you must do so off Courthouse property. It would also be improper for you to accept any money for performing weddings at the Courthouse since family court judges, circuit court judges and justices cannot receive payment, and you are not supposed to perform outside extrajudicial employment while working on the job as a judge.

Thank you for your inquiry. If you have any further questions regarding this matter please do not hesitate to contact the Commission.

Sincerely,



Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat