



JUDICIAL INVESTIGATION COMMISSION

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

April 12, 2021

Re: JIC Advisory Opinion 2021-10

Dear Judge :

Your request for an advisory opinion to Counsel was recently reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows:

Your administrative assistant has been asked to serve as Municipal Judge for the City of . The position is a part-time appointed position, Court is held one night a week. Appeals from municipal court are heard in Circuit Court. You indicated that you have no recollection in your 28 years as judge of having an appeal case from Municipal Court. You have also stated that if faced with an appeal, you would recuse yourself and transfer that case to another circuit judge.

You want to know whether it is acceptable for your assistant to serve as a municipal judge. To address your questions, the Commission has reviewed Rules 1.2, 2.12(A) and 3.1(A), (B) and (C) of the Code of Judicial Conduct which provide:

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 2.12 Supervisory Duties

- (A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

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; . . .

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.

A Judge cannot concurrently serve as a circuit judge and a municipal judge. A judge's assistant is closely associated with the judge. For that reason alone, it is improper for a judge's assistant to concurrently serve as a municipal judge. Additionally, if the assistant were to concurrently serve as a municipal judge it would likely disqualify you from hearing any municipal court appeal from the City of but it could also cause

your non-participation in any matter that comes before you involving the City itself or any of its employees. Therefore, based upon the foregoing, the Commission is of the opinion that your assistant cannot concurrently serve as a municipal judge.

The Commission hopes that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan D. Moats", with a long horizontal flourish extending to the right.

Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat

cc: Administrative Director Joe Armstrong