



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
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Charleston, West Virginia 25304
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June 4, 2021

Re: JIC Advisory Opinion 2021-14

Dear Magistrate :

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:

You are a former police officer having retired from the position in 2018. In 2019, you were appointed Magistrate, and you were elected to the position in June 2020. While you were a police officer you would occasionally assist another officer on an "off duty" job serving as a security officer for a private mattress company. Your duties consisted of checking the building's exterior doors and delivery vehicles to make sure they were secure. The "off duty" officer is retiring and the company would like you to serve as the new security officer. The work would occur every evening and weekend when the business is closed. You can select the time when you check the business so it does not affect your duties as an on-call magistrate. You do not have to wear a uniform or carry a gun. You also will be using your own vehicle. If any of the business doors or delivery vans are not secure, you would be required to notify the owner. If a crime has occurred you would call 911. You acknowledged in that instance you would probably be required to testify if any charges were brought. You indicated that an "off duty" Police officer would probably serve as your backup whenever you are unavailable. Lastly, you would be paid for the part-time work on a 1099 basis.

You want to know if it would violate the Code of Judicial Conduct for you to engage in this outside employment. To address your question, the Commission has viewed 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;
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

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.

Based upon the foregoing, the Commission is of the opinion that part-time employment as a security officer creates an appearance issue, however wrong it may be, that you are pro law enforcement. You could also be required to testify in any criminal matters involving the business which could impact on your position as magistrate. Therefore, the Commission is of the opinion that you cannot engage in part-time outside employment as a security officer.

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,



Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat

cc: Administrative Director Joe Armstrong