



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 10, 2022

Re: JIC Advisory Opinion 2022-04

Dear Mr. :

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The facts giving rise to your request are as follows: You are a lawyer by trade. You also serve as President of the State Bar. Your term as President ends on or about April 10, 2022. In late December 2021, Governor nominated you to a seat on the newly formed Intermediate Court of Appeals. The nomination requires confirmation by the West Virginia Senate pursuant to W. Va. Code § 51-11-6(b)(4). You have indicated that following confirmation, you expect to take the oath of office sometime between May 1, and June 30, 2022. The Intermediate Court of Appeals is set to begin hearing cases on July 1, 2022. You want to know the following:

1. Are there any restriction on your continuing to serve as President of the State Bar during the remainder of your term?

Answer: You may continue to serve as President of the State Bar until shortly before you are sworn in as judge or until your term as president ends, whichever is sooner. The Commission is also of the opinion that you may engage in the majority of activities you outlined as President of the State Bar. Nonetheless, the Commission wishes to remind you that prior to taking the oath as judge, you will be subject to the majority of the Rules contained in the Code as would any judge-elect who was awaiting his/her seat on the bench.

2. As President of the State Bar, you are a member of the Judicial Vacancy Advisory Commission which makes recommendations to the Governor on filling judicial vacancies. You want to know if you can continue to serve in that capacity until your term as President concludes?

Answer: Rule 4.1(A)(3) of the Code of Judicial Conduct states that, “[e]xcept as permitted by law, or by Rules 4.2, 4.3 and 4.4, a judge or a judicial candidate shall not publicly endorse or oppose a candidate for any public office.” Based on this Rule, you must immediately resign from JVAC.

3. Normally, during the year following serving as President of the State Bar, the person serves as immediate Past President of the State Bar and as such is still a member of the Bar’s Board of Governors, has a right and duty to attend the 4 BOG meetings during the year (which would run from April 11, 2022 thru April 2023) and is eligible to vote on issues brought to the BOG for consideration. You want to know if you can continue to serve as past president upon becoming judge?

Answer: You cannot concurrently serve as Past President of the State Bar and judge. Serving as past president creates the appearance, however wrong it may be, that you are still practicing law while serving as a judge.

4. As President of the State Bar, you were to take a working trip sponsored and paid for by a company who insures lawyers. The trip was postponed until sometime after you are sworn in as judge. You asked our counsel whether you could still go on the trip?

Answer: Since it is likely that the entity paying for the trip would be involved in cases that come before you, you should not go on the trip.

5. You have been asked by a Professor at _____ College of Law to participate in some classes at the law school on various subjects as a guest speaker and to co-author an article on professionalism and civility, which has been a focus of my tenure as Bar President and

in conjunction with the Supreme Court. You want to know if you can engage in those endeavors?

Answer: You may do both as long as you comply with the provisions of Rule 2.10 of the Code of Judicial Conduct and do not discuss cases or issues that are likely to come before any court.

The Commission wishes to take this opportunity to congratulate you on your nomination. We hope that this opinion fully addresses the issue which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns or desire additional advice.

Sincerely,



Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat