



**JUDICIAL INVESTIGATION COMMISSION**

City Center East - Suite 1200 A  
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Charleston, West Virginia 25304  
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January 12, 2022

Re: JIC Advisory Opinion 2022-06

Dear \_\_\_\_\_ :

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 were recently contacted by an administrative assistant to a circuit judge and asked if he/she can run for the non-judicial position of city councilman/councilwoman. You want to know if this is permissible.

To address your question, the Commission has reviewed Rules 4.5(A) and 2.12(A) of the Code of Judicial Conduct which state:

**Rule 4.5      Activities of Judges who Become Candidates for  
Nonjudicial Office**

- (A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.

**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.

The Comments to both Rules are also instructive. Comment [1] to Rule 4.5 states in part:

In campaigns for nonjudicial elective public office, candidates may make pledges, promises or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaign is inconsistent with the role of a judge who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

Meanwhile, Comment [1] to Rule 2.12 states:

A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

Based upon this, an administrative assistant to a circuit judge cannot run for a nonjudicial public office without having to resign his/her judicial employment. If the administrative assistant chooses to run for city council he/she cannot keep his/her current position. This decision is consistent with a long line of opinions in which we have held that judicial employees must resign their positions if they decide to run for nonjudicial office. *See* JIC Advisory Opinion 2004-08 (magistrate assistant must immediately resign his/her position if he/she decides to run for a seat on the county Board of Education); JIC Advisory Opinion 2018-03 (magistrate assistant must immediately resign position if he/she decides to run circuit clerk); and JIC Advisory Opinion 2018-16 (law clerk must immediately resign his/her position if he/she decides to run for a nonjudicial public office). *See also Philyaw v. Gatson*, 195 W. Va. 474, 466 S.E.2d 133 (1995) (the requirement that a magistrate assistant must resign judicial office upon becoming a candidate for circuit clerk is a reasonable condition of judicial employment).

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