



JUDICIAL INVESTIGATION COMMISSION

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

July 26, 2022

Re: JIC Advisory Opinion 2022-19

Dear Mr. :


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 wife was recently appointed County Magistrate Court Clerk. You are contemplating a run for Magistrate of County in the 2024 election. You want to know whether your wife can continue to serve as Magistrate Court Clerk should you be elected magistrate.

To address your question, the Commission has reviewed W. Va. Code § 50-1-9a which states that a magistrate court deputy clerk “may not be an immediate family member of any magistrate, magistrate court clerk, magistrate assistant or judge of the circuit court within the same county. . . .” As you correctly point out, W. Va. Code § 50-1-8 does not have a similar limitation for the Magistrate Court Clerk.

Rule 2.13(A)(2) of the Code of Judicial Conduct states that “In making administrative appointments, a judge shall avoid nepotism [or] favoritism. . . .” The Code defines nepotism as “the appointment or hiring of any relative within the third-degree of relationship of either the judge or the judge’s spouse or domestic partner, or the spouse or domestic partner of such relative.” If you were already a magistrate your wife would have been precluded from serving as a magistrate clerk. The Commission is of the opinion that the converse is true in that if you were elected, your wife would have to resign as magistrate. Both the West Virginia Code and the Code of Judicial Conduct frown on a spouse working for an elected official in a subordinate position. Moreover, such a relationship would create the perception however wrong it may be that an elected magistrate is biased in favor of his/her spouse in employment matters. It also has the potential to create employment conflicts between the two parties.

Therefore, the Commission is of the opinion that if you are elected magistrate, your spouse must resign as magistrate clerk before you take office. 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