



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
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Charleston, West Virginia 25304
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July 27, 2022

Re: JIC Advisory Opinion 2022-22

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: A magistrate clerk works part-time as a realtor. He/she recently sold a home to an individual and now wants to hire that person part-time to handle worthless checks and other administrative tasks. The worthless check position is considered a county position and not a court position but the hire must be approved by the magistrate clerk before the position can be filled. The individual in question did not apply in response to a job posting for a deputy clerk position which last occurred in or around December 2021. Instead, he/she learned about the position from the magistrate clerk during or soon after the real estate transaction.

You want to know if the magistrate clerk can fill this position in this manner. To address your question the Commission has reviewed Rules 1.2, 2.4(B), 2.12(A) and 2.13(A)(1) and (2) 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 2.4 – External Influences on Judicial Conduct

- (B) A judge shall not permit . . . financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.

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.

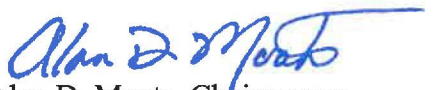
Rule 2.13 – Administrative Appointments

- (A) In making administrative appointments, a judge:
- (1) Shall exercise the power of appointment impartially and on the basis of merit; and
 - (2) Shall avoid . . . favoritism. . . .

The Commission is of the opinion that it would be improper for the magistrate clerk to hire an individual who he/she just sold a house to in this manner. It creates the appearance, however wrong it may be, that the person is receiving the job simply because he/she used the magistrate clerk as his/her realtor and not because the individual is the best, most qualified candidate for the position.

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