



JUDICIAL INVESTIGATION COMMISSION

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

September 19, 2022

Re: JIC Advisory Opinion 2022-26

Dear _____ :

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: In a multi-county jurisdiction, the Magistrate and the Circuit Judge in question serve in the same county. The Circuit Judge is not the Chief. The position has been held by another Circuit Judge for the past six years.

The Magistrate is in need of a new assistant since his assistant was appointed Magistrate on or about September 13, 2022. The vacancy was not posted. According to the Magistrate, he asked "people to spread the word and I did have four people express interest. The Circuit Judge stated that his wife had expressed interest in the position for a couple of years. The Circuit Judge told her that a vacancy had occurred and she expressed interest. The Circuit Judge then informed the Magistrate of his wife's interest in the position. She was invited in to job shadow and interview. The Circuit Judge said he explicitly told the Magistrate that he wanted no consideration given to who she was married to and he would not be upset if he hired someone else. The Magistrate interviewed three of the candidates including the Circuit Judge's wife. The Magistrate then offered the position to the Circuit Judge's wife. The wife had previously worked as

an administrative assistant to two circuit judges and had worked in her husband's law practice before he became judge.

The matter was first red-flagged by a payroll clerk in the Administrative Office who questioned whether the hire was proper. The clerk contacted the Deputy Administrative Director, who then contacted our counsel. After consultation with the Chair, our counsel then contacted the Administrative Director and informed him that the hiring of the judge's wife as a magistrate assistant was problematic. Shortly thereafter, the Circuit Judge contacted our counsel and requested a formal opinion. Within the hour, the Magistrate, having been advised that it was problematic, also requested a formal opinion.

You both want to know if the Circuit Judge's wife can serve as a magistrate assistant. To address your question, the Commission has reviewed Rules 1.2, Rule 2.12(A) and (B) and 2.13(A) of Code of Judicial Conduct and JIC Advisory Opinion 2007-07. The Code provisions 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 2.12 – 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.
- (B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

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 nepotism, favoritism and unnecessary appointments.

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.” Third degree of relationship includes “great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.”

In JIC Advisory Opinion 2007-07, a former Commission held that the adult daughter of a circuit judge may serve as a magistrate assistant since the Circuit Judge played no part in the potential hiring. The daughter already worked for the individual who had decided to seek the appointment and/or run for magistrate. The daughter was approached directly by the candidate and the circuit judge had not been involved in any of the discussions. The Circuit Judge also had “nothing to do with promoting [his] daughter as a potential magistrate assistant. The Circuit Judge also indicated that he/she would be willing to sign an agreement with the other judges in the circuit that would prevent him/her from “being involved in [any] matter dealing with [the] daughter’s employment or potential employment” as a magistrate assistant. In that matter, the former Commission cautioned the Circuit Judge to “take care to observe those safeguards which [he/she] set forth in [his/her letter] in the event that a situation involving [his/her] daughter arose while [he/she] were chief circuit judge and responsible for the administration of the magistrate court.

In the case, the Circuit Judge has not stayed at arm’s length. He told his wife of the vacancy and then informed the Magistrate of her interest in the position. This involvement calls into question the hiring process in the instant matter. However wrong it may be, public perception will likely be that the Magistrate hired the Judge’s wife because he had no choice or that he was attempting to curry favor with the judge. Moreover, there has been no prior written agreement that the judge would stay out of employment matters involving his wife. The Commission is also at a loss to understand how the other Circuit Judges in the jurisdiction are supposed to treat the judge’s wife just like any other employee. She isn’t. She is the spouse of an equal. It is improper for the judge to put his brethren in such an awkward position. Moreover, the wife’s position as a magistrate assistant would disqualify the judge from presiding over any magistrate appeals or felony prelims involving her immediate boss.

The Commission is of the opinion¹ that the cited Code provisions are violated when the spouse of a judge works as a magistrate assistant in the same county where he/she resides no matter the circumstances. To the extent that this opinion is inconsistent with JIC Advisory Opinion 2007-07, the latter is overruled. Judges’ spouses should not serve as magistrate assistants.

¹ The vote was 8-0. Judge Cohee disqualified herself from participation.

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: Joe Armstrong, Administrative Director
Keith Hoover, Deputy Administrative Director