



## **JUDICIAL INVESTIGATION COMMISSION**

WV Judicial Tower - Suite 700 A  
4700 MacCorkle Ave., SE  
Charleston, West Virginia 25304  
(304) 558-0169

April 28, 2023

Re: JIC Advisory Opinion 2023-11

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

Your request for a formal advisory opinion was recently reviewed by the Judicial Investigation Commission. The facts giving rise to the request are as follows: A long time magistrate recently retired from office. He/She has since accepted a court security job at the courthouse where he/she used to work and the County Commission pays his/her salary. You want to know if the former magistrate can concurrently serve as court security and as a senior status magistrate in other counties.

To address the question which you have raised, the Commission reviewed the Constitution of West Virginia, Article VIII, § 7, which provides in pertinent part: "No justice, judge or magistrate shall hold any other office, or accept any other appointment for public trust, under this or any other government; . . ." Application I(A) of the Code of Judicial Conduct defines the term "judge" to include magistrates.

The Commission has also reviewed various provisions of the Code of Judicial Conduct including:

### **Rule 1.1 Compliance with the Law**

A judge shall comply with the law, including the West Virginia Code of Judicial Conduct.

## **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 2.1 Giving Precedence to the Duties of Judicial Office**

The duties of judicial office, as prescribed by law, shall take precedence over all a judge's personal and extrajudicial activities.

## **Rule 2.2 Impartiality and Fairness**

A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially.

## **Rule 3.1 Extrajudicial Activities in General**

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity or impartiality;

The Preamble to the Code of Judicial Conduct provides:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to the American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law. . . . Good judgment and adherence to high moral and personal standards are also important.

Comment [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.” Comment [2] provides that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Comment [4] states that “[j]udges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.” Comment [5] provides:

Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Comment [1] to Rule 2.1 states that “[t]o ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification.” Comment [1] to Rule 2.2 notes that “[to] ensure impartiality and fairness to all parties, a judge must be objective and open-minded.”

Based upon the foregoing, the Commission is of the opinion that a Senior Status Magistrate cannot concurrently serve as court security. He/She can choose to do one or the other but not both. To do so would not only violate the Constitution but it would create in the minds of members of the public, however wrong they may be, that he/she was biased in favor of law enforcement. The Commission is also concerned about the impact service as a court security officer would have on a senior status magistrate's judicial service since judicial duties are supposed to take precedence over all other activities. Accordingly, the Commission unanimously finds that a senior status magistrate cannot concurrently serve as a court security officer without violating the Constitution or the Code.

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