



JUDICIAL INVESTIGATION COMMISSION

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

June 6, 2023

Re: JIC Advisory Opinion 2023-15

Dear Attorney :

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: You are contemplating running for judge in the 2024 election. At present, you are a solo practitioner but plan to bring an associate into your practice. The law office is housed in a building owned by a private corporation jointly belonging to your spouse and you. If you are elected, you plan to sell your practice to your associate or someone else. However, you wish to retain the building and have the new attorney pay the corporation rent. You believe that the practice and the building have the capacity to grow to two or three lawyers. You state that as a judge you would never rent to a Public Defender Office or a Prosecutor's Office. You also indicated that any law practice housed in the building would agree, as part of the lease terms, that its attorneys could not appear before you in court. Fortunately, you are located in a county which has a sufficient number of lawyers that would allow for such a provision. Additionally, you are running in a circuit with more than one judge. You want to know, if elected, can your spouse and you maintain ownership of the building and rent it to a lawyer or lawyers accordingly.

To address your question the Commission has reviewed Rule 3.11(C) of the Code of Judicial Conduct which states:

- (C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:
 - (1) interfere with the proper performance of judicial duties;

- (2) lead to frequent disqualification of the judge; [or]
- (3) Involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves;

In JIC Advisory Opinions 1991-07 and 1991-01, the Commission advised judges who already owned buildings with lawyers as tenants that they had three options: (1) they could sell the property in question; (2) disqualify themselves from all cases involving the lawyers and refer them to another judge in the circuit for hearings and matters being handled by the renting attorneys; or (3) not rent to any lawyers or persons likely to come before the Court on a regular basis. While these financial transactions must be viewed on a case by case basis, the Commission is of the opinion that you could avail yourself of any of the options including number two without running afoul of the Code of Judicial Conduct since you already own the building, you are in a multi-judge circuit, there is a sufficient number of lawyers practicing in the circuit, and you would disqualify yourself from presiding over any case involving your renter(s).

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