



JUDICIAL INVESTIGATION COMMISSION

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

November 15, 2023

The Honorable

Re: JIC Advisory Opinion 2023-27

Dear Judge :

Your request for an advisory opinion to Counsel was recently reviewed by the Judicial Investigation Commission. The facts giving rise to your request are as follows: You currently serve as a judge in your circuit and plan on running for the same position in the 2024 election. A staff member has expressed interest in helping you with your campaign. To that end, you want to know if one or more members of your staff are permitted to share campaign posts from your election Facebook page to their personal page, whether they can attend community events with you, wear your campaign tee shirts, and/or put one of your campaign signs in their yards.

To address your questions the Commission has reviewed Rules 4.1 and 4.2 of the Code of Judicial Conduct which state in pertinent part:

Rule 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General

- (A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not: . . .
- (3) publicly endorse or oppose a candidate for any public office;
 - (4) solicit funds for a political organization or a candidate for public office;
 - (5) make a contribution to a candidate for public office; . . .

- (8) require court staff to participate in a campaign for judicial office, or use court resources in a campaign for judicial office; . . .
- (B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

Rule 4.2 Political and Campaign Activities of Judicial Candidates in Public Elections

- (A) A judge or candidate subject to public election shall:
 - (1) act at all times in a manner consistent with the independence, integrity and impartiality of the judiciary;
 - (2) comply with all applicable election, election campaign, and election campaign fundraising laws and regulations of this jurisdiction; . . .
 - (4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.
- (B) A judge or candidate subject to public election may, except as prohibited by law: . . .
 - (3) speak on behalf of his or her candidacy through any medium, including but not limited to . . . websites; . . .

In JIC Advisory Opinion 2004-11, the Commission told a magistrate that his/her assistant “would not be able to conduct fundraising on behalf of the magistrate since he/she could not do so on his/her own behalf but must do so through a campaign committee. The Commission also told that magistrate that the assistant “would be prohibited from engaging in any activity on your behalf that you are not permitted to engage in under the Code of Judicial Conduct.

In JIC Advisory Opinion 2012-08 a probation officer was advised that he/she was limited in campaign activity for his/her spouse who was running for magistrate. Essentially, the Commission informed the probation officer that he/she could attend campaign rallies or other social functions with the candidate spouse. However, the probation officer could not engage in any fundraising activities or perform volunteer manual labor connected with the campaign such as handing out campaign signs or posters being previously requested by individuals or delivering or picking up items from the printers or commercial advertisers at the request of the spouse. Importantly, the Commission informed the probation officer that any campaign activities must occur after work hours and outside the area where court proceedings are conducted. In JIC Advisory

Opinion 2016-05, the Commission told a judge that his/her staff could appear in campaign advertisements “as long as the appearance is voluntary and done after normal work hours.”

Based upon the foregoing and in addition thereto, the Commission is of the opinion that a staffer can campaign for you as long as it is strictly voluntary and on his/her own time. A staff member cannot serve on your campaign committee in any capacity, including but not limited to, treasurer or campaign chair. A staffer can put a sign in his/her yard for the judge and re-post on his/her Facebook page to vote for you for judge. A staffer is free to attend community events as long as it is on his/her own time and voluntary. A staffer can wear campaign t-shirts but not on courthouse property. Even though a judge is permitted to donate to his/her own campaign, a staffer is precluded from doing so because it creates the appearance however wrong it may be that he/she is paying in order to keep his/her job.

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