



JUDICIAL INVESTIGATION COMMISSION

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

January 26, 2024

Re: JIC Advisory Opinion 2024-02

Dear :

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 are considering filing to run for Magistrate. You are a Realtor working for a realty company. You have no ownership interest in the company. You are simply employed by the company. You are also a co-owner of a separate LLC with another Realtor who has no ties to law enforcement or anyone else that may regularly appear in court. The LLC has rental properties that consist of three single-family apartments and twelve storage units. You would like to know if you were elected, could you continue these activities on a part-time basis?

To address your questions the Commission has reviewed Rules 3.1(A), (B), 3.11(B) and (C) of the Code of Judicial Conduct which state in pertinent part:

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;

Rule 3.11 Financial, Business, or Remunerative Activities

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(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;

(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; or

(4) result in violation of other provisions of this Code.

In JIC Advisory Opinion 1996-32, the Commission told a Magistrate that he/she could not continue to work as a Realtor for an agency because it violated (current) CJC Rule 3.11(B)'s prohibition against a judge serving as an employee of any business entity except a business closely held by the judge or members of the judge's family or a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

Based upon the foregoing, the Commission is of the opinion that if elected, you would not be able to continue your employment as a Realtor working for the realty company.

When considering any outside employment, it is important to make sure that any activities will not lead to frequent disqualification. Because the co-owner of the LLC has no ties to law enforcement or anyone else that may routinely appear in Magistrate Court and the small number of rentals and storage units, it appears that this business would not lead to frequent disqualification.

Therefore, the Commission is of the opinion that if elected you could continue your business activities with your LLC and it would not be a violation of the Code of Judicial Conduct. However, as with all outside employment of judicial officers, you will be required to also receive the approval from the Administrative Director of the Supreme Court of Appeals of West Virginia.

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/bjl