



JUDICIAL INVESTIGATION COMMISSION

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

February 21, 2024

Re: JIC Advisory Opinion 2024-06

Dear :

The Commission has considered your recent request for an advisory opinion. The facts giving rise are as follows:

At one time, you were Chair of the County (political party) Executive Committee. In May 2022, the Committee became embroiled in a dispute with an individual over whether he/she should be seated as a Committee representative for a certain Magisterial District. In June 2022, the individual filed a Petition for Writ of Mandamus against the Committee and its officers. You represented the Committee and all officers, including yourself, in the matter. It should be noted that in July 2022 you ceased serving as County Chair and became Chair of the State (political) Party. In August 2022, the Circuit Court ruled in favor of the individual and ordered the Committee to seat the individual as a representative of the Magisterial District in question. You appealed the decision to the Supreme Court of Appeals of West Virginia and all briefs were filed by January 4, 2023. On or about January 24, 2024, the State Supreme Court set the matter for oral argument on or about February 21, 2024. By Order entered February 20, 2024, oral argument was continued generally.

Meanwhile, between September and December 2023, you represented the State (political party) as local counsel in a federal court case over whether Former President Donald Trump could be on the 2024 WV ballot for President. The federal court granted a State (political party) motion to dismiss and you filed former President Trump's paperwork on his behalf with the WVSOS to run in the State of WV for President. Meanwhile, the other side filed a Notice of Appeal in the U.S. Court of Appeals for the Fourth Circuit. However, the other side supposedly failed to perfect the appeal because it

missed the deadline to file a brief. In the interim, a Colorado case was heard by the United States Supreme Court which is currently pending a decision. You don't anticipate any further litigation will transpire in the 4th Circuit. However, you did receive an informal briefing order from the 4th Circuit which was filed on or about January 11, 2024.

On January 5, 2024, you announced that you would be stepping down as Chair of the State (political) Party as soon as a successor was selected at the Party's winter meeting on or about January 20, 2024. On January 27, 2024, you filed to run for a seat as judge on the _____ in the May 2024 election.

You want to know if you can still represent the County and State (political) Parties in the lawsuits while contemporaneously running for a judicial seat. To address your question, the Commission has reviewed Rules 4.1(A)(1), 4.1(A)(2) and 4.2(A)(1) of the Code of Judicial Conduct which state:

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:
 - (1) Act as a leader in, or hold an office in, a political organization;
 - (2) Make speeches on behalf of a political organization; . . .

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.

Comment [3] to Rule 4.1 states that “[p]ublic confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by Paragraph (A)(1) from assuming leadership roles in political organizations.” Comment [4] notes that (A)(2) is designed to prevent judges and judicial candidates from “abusing the prestige of judicial office to advance the interests of others.” Comment [3] to Rule 4.2 provides:

A judge or candidate may be a member of a political party, and that affiliation is and has been a matter of public record in West Virginia. A judge or candidate may be endorsed by or otherwise publicly identified or associated with a political party by a person or entity not affiliated with

the judicial campaign. Therefore, a judge or candidate may maintain his or her party affiliation through a judicial election, and he or she may include political party affiliation or similar designation in campaign communications and literature.

Representing a party as a lawyer is not the same as holding a leadership position in an organization. To be on the County or State Executive Committee, a member has to be elected to the position. A lawyer is retained to represent a party in a matter. Moreover, making arguments on behalf of a client is not the same as making speeches on behalf of a political organization. The former is based on the rule of law, statutes, and case law. The latter is based on ideology and opinion.

A party to a legal proceeding is entitled to his/her attorney of choice. Therefore, the Commission is of the opinion that the foregoing representations are permissible. However, as a candidate you must be careful not to use the representation as a means to skirt the Code of Judicial Conduct while running for office. To that end, you should preface any statements, comments and media responses associated with the representation as “that you are speaking only as counsel for the parties.” Additionally, should you be elected as a Judge you must be mindful of Rule 2.11 of the Code of Judicial Conduct and Trial Court Rule 17 as they relate to disclosure/disqualification in matters involving the County or State (political party) that may come before you. Lastly, just prior to taking the oath of office you will be required to terminate both representations if they have not concluded by that time.

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