



JUDICIAL INVESTIGATION COMMISSION

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

August 29, 2024

Re: JIC Advisory Opinion 2024-16

Dear Magistrate :

Your request for an advisory opinion was recently reviewed by the Commission. The factual scenario giving rise to the question is as follows: You have served as a Magistrate in your home county for several years. You opted not to run in the May 2024 election so your service as a sitting magistrate will end after December 31, 2024. You have applied to be a Senior Status Magistrate. You indicated that you would limit your service as a Senior Status Magistrate to counties other than the county in which you reside. You would also like to serve as a substitute teacher in your home county. You want to know if you can concurrently serve as a Senior Status Magistrate and a substitute teacher.

To address your question the Commission has reviewed Rules 3.1 and 3.12 of the Code of Judicial Conduct which state:

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 the frequent disqualification of the judge;
- (C) Participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity and impartiality;

3.12 Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

Comment [1] to Rule 3.1 states:

To the extent that time permits and judicial independence and impartiality are not compromised judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system and the administration of justice, such as by speaking, writing teaching or participating in scholarly research projects. In addition, Judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involved Rule 3.7.

Comment [1] to Rule 3.12 noted that a judge may accept fees or salaries for extrajudicial activities as long as they are "reasonable and commensurate with the task performed." However, the judge must be mindful that "judicial duties take precedence over other activities." Comment [2] states that extrajudicial compensation may be subject to public reporting."

In JIC Advisory Opinion 2024-04, we held that a sitting judge could not serve as a school coach since the latter is dependent upon the County School Board, an entity who regularly appears in Court as a party in a proceeding, for the position and the salary. The Commission found that the appearance issue was such that it would disqualify any sitting judge/coach from presiding over any matter involving the Board of Education. For the same reason, the Commission is of the opinion that a sitting judge could not concurrently serve as a substitute teacher.

However, a senior status magistrate is different in that he/she is only called to serve on rare occasions when another magistrate in either their home county or any other jurisdiction in West Virginia is unable to serve for a finite period of time. Since you will not serve as a senior status magistrate in your home county where you only will substitute teach, the Commission is of the opinion that you may concurrently serve in both capacities. However, you must always remember that your duties as a senior status magistrate take precedence over those of a substitute teacher.

Thank you for your inquiry. Please do not hesitate to contact the Commission should you have any further questions, comments or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan D. Moats", with a long horizontal line extending from the end of the signature.

Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM: tat