



JUDICIAL INVESTIGATION COMMISSION

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

November 15, 2024

Re: JIC Advisory Opinion 2024-21

Dear :

Your request for an advisory opinion was recently reviewed by the Commission. The facts giving rise to your request are as follows:

An attorney has served as the Court's general receiver since 2007 pursuant to W. Va. Code § 51-6-1, *et seq.* The general receiver is appointed by the Circuit Court and serves at its will and pleasure. Thus, the general receiver is considered an agent of the Circuit Court. The responsibility of the general receiver is to "receive, take charge of and invest in such stock or other security as the Court may order, and in the manner required by such order, all moneys paid into court, or into bank or other place of deposit, under any judgment, order or decree of such court, and standing subject to its orders; and also to pay out or dispose of the same as the court may order or decree." *Id.* As payment, the general receiver gets a percentage of the amount received and invested or paid out by him/her in each case and as the Court directs. See W. Va. Code § 51-6-7.

The attorney's child ran for circuit judge in the May 2024 election in the same county where the father serves as general receiver. The child won and will take office on January 1, 2025.

You want to know if the father can remain as the general receiver after his child takes office as judge. To address your question, the Commission has reviewed Rules 1.2, 1.3 and 2.13 of the Code of Judicial Conduct which state:

Rule 1.2 – Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.3 – Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.

Rule 2.13 – Administrative Appointments

- (A) In making administrative appointments, a judge:
 - (1) Shall exercise the power of appointment impartially and on the basis of merit; and
 - (2) Shall avoid nepotism, favoritism and unnecessary appointments.

Comment [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.” Comment [2] provides that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” Comment [5] provides:

Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Comment [1] to Rule 2.13 notes that appointees of a judge include receivers and that “Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).” Comment [2] defines nepotism as “the appointment within the third degree of relationship of either the judge or the judge’s spouse or domestic partner, or the spouse or domestic partner of such relative.” The Code defines third-degree of relationship to include “parent” and “child.”

In JIC Advisory Opinion 2022-19, the Commission held that an already sitting magistrate clerk would have to resign her position if her spouse ran for and won the position of magistrate in the same county. The Commission said:

If you were already a magistrate your wife would have been precluded from serving as magistrate clerk. The Commission is of the opinion that the converse is true in that if you were elected, your wife would have to resign as magistrate. Both the West Virginia Code and the Code of Judicial Conduct frown on a spouse working for an elected official in a subordinate position. Moreover, such a relationship would create the perception however wrong it may be that an elected magistrate is biased in favor of his/her spouse in employment matters.

Based upon the forgoing, a majority of the Commission believes that the situation in JIC Advisory Opinion 2022-19 is the same as for the general receiver parent and the soon to be circuit court judge in this request. Therefore, the Commission is of the opinion that the general receiver parent can no longer serve in that capacity when his child takes office on January 1, 2025.

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