



## **JUDICIAL INVESTIGATION COMMISSION**

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

May 9, 2025

Re: JIC Advisory Opinion 2025-07

Dear : :

You have applied for a Magistrate vacancy in the county in which you reside. You want to know if your living arrangements are an impediment to you being appointed to the position of Magistrate. You have been in a relationship with the Chief Magistrate's assistant for approximately four years. You live together in a house owned by you. According to you, you pay the mortgage and all utility bills. You both have separate checking accounts and separate car payments. You also file taxes separately. The only household item that you collaborate on would be groceries. You also do not have any children together.

To address your questions, the Commission has reviewed W. Va. Code § 51-1-9 and Rules 1.2 and 2.13 of the Code of Judicial Conduct. W. Va. Code § 51-1-9 governs Magistrate Assistants and states in pertinent part that "[t]he assistant shall not be a member of the immediate family of any magistrate." The Rules of the Code of Judicial Conduct provide:

### **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 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.

The Code of Judicial Conduct defines nepotism as “the appointment or hiring of any relative 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 further defines a member of a judicial candidate’s or judge’s family to include a “spouse [or] domestic partner . . . .”

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 1.3 states that “[i]t is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.”

Based upon the foregoing the Commission is of the opinion that it would be improper for a judge to appoint a magistrate who is in an intimate relationship and resides with a magistrate assistant since it would at a minimum violate the spirit of the state statute in question. Moreover, since the Commission believes that the state statute should be read *in pari materia* with the Code of Judicial Conduct, the Commission finds that it violates both the letter and the spirit of the two provisions when viewed in conjunction with one another. It creates the appearance however wrong it may be that the appointment would be based on nepotism and not on merit.

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