



JUDICIAL INVESTIGATION COMMISSION

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

May 13, 2025

Re: JIC Advisory Opinion 2025-09

Dear :

Your request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. You want to know what, if anything, you can do to oppose the condemnation of some of your property in order to build an overhead electric transmission line. The facts giving rise to your question are as follows:

The Mid-Atlantic Resiliency Link ("MARL") is a 200 feet wide 500 kV high-powered transmission line running from Greene County, Pennsylvania, to Loudon County, Virginia. A portion of it is projected to pass through the county where you reside, and one of the two proposed routes crosses your real estate. It also crosses the real estate of your first cousins who you are close to as well as those belonging to friends. According to you, there is fierce local opposition to the MARL. Groups and coalitions are forming and town hall meetings are taking place. You believe that the building of the structure will result in countless condemnation suits including one involving your property. You want to know what role you can play in: (a) public meetings, groups or coalitions to discuss the MARL; (b) opposing the MARL being constructed at all levels – administrative, state or federal; and/or (c) as a party in a lawsuit including having to retain counsel.

To address your questions, the Commission has reviewed Rules 1.3, 2.11, and 3.10 of the Code of Judicial Conduct which state:

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 2.11 – Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.
- (2) The judge knows that the judge, the judge’s spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is: (a) a party to the proceeding . . . ; (b) acting as a lawyer in the proceeding; (c) a person who has more than a *de minimis* interest that could be substantially affected by the proceeding; or (d) likely to be a material witness in the proceeding.
- (3) The judge knows that he or she, individually or as a fiduciary, or the judge’s spouse, domestic partner, parent or child, or any other member of the judge’s family residing in the judge’s household has an economic interest in the subject matter in controversy or is a party to the proceeding.
- (4) The Judge, while a judge or a judicial candidate, has made a public statement other than in a court proceeding, judicial decision or opinion that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

. . . .

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge’s disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Rule 3.10 – Practice of Law

A judge shall not practice law. A judge may act *pro se* and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family but is prohibited from serving as the family member's lawyer in any forum.

The Code defines "member of the judge's family" as a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship." A "third degree of relationship" includes the following persons: "great-grand-parent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece." While first cousins are not within the third-degree of relationship they may still be considered a member of a judge's family depending on the nearness of the relationship.

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." Comment [1] to Rule 3.10 reinforces this concept:

A judge may act *pro se* in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. *See* Rule 1.3.

When a question of disqualification arises an analysis must be made of when a current or former relationship causes a reasonable questioning of a judge's impartiality. In *State ex rel. Brown v. Dietrick*, 191 W. Va. 169, 444 S.E.2d 47 (1994), the Court considered whether the circuit court was correct in holding that a search warrant issued by a magistrate was void because the magistrate was married to the Chief of Police and one of his officers had obtained the warrant. The Court held that in any criminal matter where the magistrate's spouse was involved the magistrate would be disqualified from hearing that matter. The Court declined to extend a *per se* rule to other members of the police force. The fact that the magistrate's spouse was the chief of police of a small agency did not automatically disqualify the magistrate who could be otherwise neutral and detached from issuing a warrant sought by another member of the police force.

In *Tennant v. Marion Health Care Foundation*, 194 W. Va. 97, 459 S.E.2d 374 (1995), the Court held that a judge should disqualify himself or herself from any proceeding in which his impartiality might reasonably be questioned. The Court noted that the avoidance of the appearance of impropriety is as important in developing public confidence in the judicial system as avoiding actual impropriety and that the judge should take appropriate action to withdraw from a case in which the judge deems himself or herself biased or prejudiced. *Tennant* cited the commentary to former Canon 3E(1) which states that a judge should timely disclose on the record information which he/she believes the parties or their lawyers might consider relevant to the question of disqualification. Litigants and counsel

should be able to rely on judges complying with the Code of Judicial Conduct. There is no obligation imposed on counsel to investigate the facts known by the judge which could possibly disqualify the judge. The judge has a duty to disclose any facts even if the judge does not feel that they are grounds for disqualification *sua sponte*.

Tennant also addressed the rule that a judge has an equally strong duty to sit where there is no valid reason for recusal. In so doing, the Court set forth a balancing test between the two concepts. While giving consideration to the administration of justice and the avoidance of the appearance of unfairness, a judge must also consider whether cases may be unfairly prejudiced or delayed or discontent may be created through unfounded charges of prejudice or unfairness made against the judge. The Court noted that the standard for recusal is an objective one. Facts should be viewed as they appear to the well-informed, thoughtful and objective observer rather than the hypersensitive, cynical and suspicious person.

Based upon the foregoing, the Commission is of the opinion that you may attend public meetings and speak only on your own behalf about your opposition to the transmission line. You must not mention that you are a judge or be introduced as a judge. You may also represent yourself in any administrative or court proceeding concerning the matter, but again, you must not indicate that you are a judge or be introduced as a judge. You may give legal advice and draft or review documents for a member of your family including your cousins since you are close to them.

Since you are clearly biased against the line, you should not preside over any matters involving or concerning the entity including but not limited to any condemnation proceedings occurring in your circuit. Moreover, any other judge in your circuit would automatically be disqualified from presiding over any proceeding wherein you are a party. If you choose to retain a lawyer to represent you in the matter, you must disclose the representation in each and every matter involving the lawyer or his firm until the representation has concluded or the legal fees have been paid in full -- whichever is longer. If anyone objects to your presiding over the matter, you must follow Trial Court Rule 17.

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