



JUDICIAL INVESTIGATION COMMISSION

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

May 19, 2025

Re: JIC Advisory Opinion 2025-10

Dear :

Your request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. Your daughter-in-law, who does not reside in your household, plans to apply for a job at the prosecutor's office as an assistant. As you understand it, the job entails handling juvenile matters, answering phones and other receptionist duties and typing Orders and other pleadings. According to you the position is also involved with truancy court. Specifically, the person appears in person and assists with processing form Orders related to improvement periods, probation or deferred adjudications. You are not the truancy court judge but you do handle regular juvenile cases as assigned. You want to know whether you must disclose and/or disqualify on any cases involving the prosecutor's office if your daughter-in-law goes to work there.

To address your questions, the Commission has reviewed Rule 2.11 of the Code of Judicial Conduct which states:

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.

....

- (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.

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.

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 are disqualified from handling any juvenile or truancy matters if your daughter-in-law goes to work for the prosecutor's office. As to any other matter involving the prosecutor's office, you should disclose the nature of the relationship and follow Trial Court Rule 17 wherever applicable. If your daughter-in-law's position should change at the prosecutor's office, you will need to revisit the matter as it relates to disclosure/disqualification.

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