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

October 14, 2025

Re: JIC Advisory Opinion 2025-14

Dear :

Your request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. You are a new Family Court Judge having taken office on or about January 1, 2025. Your ex-husband is a lawyer. His law partner and an associate in his firm practice family court law in your circuit. According to you, you receive alimony from your ex-husband and will continue to do so throughout your term as a judge. You also expressed displeasure with the lawyer who handled your divorce, and you believe "that experience has created a negative bias in any matter in which [he/she] may appear before me." You want to know if you are disqualified from presiding over any cases involving your ex-husband's law partner and associate and/or your former attorney.

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.
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> (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.
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> (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.

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 family court matter involving your ex-husband's law partner and associate and your former divorce attorney. 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

ADM/tat