



JUDICIAL INVESTIGATION COMMISSION

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

January 27, 2026

Re: JIC Advisory Opinion 2026-01

Dear :

Your request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. You are a law clerk to a circuit court judge. The prosecutor position in a different circuit located 75 miles from the county you work in is up for election this primary because the current prosecutor retired before the primary cut-off date. You are contemplating filing to run for that nonjudicial position and want to know if you will be required to resign as a law clerk if you take such action.

To address your questions, the Commission has reviewed Rule 4.5(A) of the Code of Judicial Conduct which states that “[u]pon becoming a candidate for nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.” Comment [1] to the Rule states:

In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

Comment [2] notes that the “resign to run” rule ensures “that a judge cannot use the judicial office to promote his or her candidacy.”

Based upon the foregoing, the Commission holds that judicial employees such as law clerks who work closely with judges must also resign to run for nonjudicial office. They must take the action immediately upon announcing their candidacy, filing their paperwork with the proper election authority or setting up a campaign committee, whichever is earliest. The requirement to resign occurs whether the judge or judicial employee runs for nonjudicial office in their circuit or in some other circuit outside their jurisdiction.

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