



JUDICIAL INVESTIGATION COMMISSION

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

May 21, 2026

Re: JIC Advisory Opinion 2026-04

Dear :

Your request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. You want to know the ethical parameters for an active full-time judicial officer who is seeking public or private employment. To address this question the Commission has reviewed Rules 1.2, 2.1, 2.11 and 3.1 of the Code of Judicial Conduct which provide in pertinent part:

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 2.1 – Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

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. . . .

Rule 3.1 – Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not: . . .

- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

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 [4] states that “[j]udges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.” 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.

The Code defines impropriety as conduct that violates the law, court rules or provisions of the CJC and conduct that undermines a judge's independence, integrity or impartiality. Independence means “a judge's freedom from influence or controls other than those established by law.” Impartiality means an “absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.” Integrity is defined as “probity, fairness, honesty, uprightness and soundness of character.” A judge who appears partial to one side or the other also appears to lack fairness and independence.

Comment [1] to Rule 2.1 states that in order “to ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification.” Comment [1] to Rule 3.1 states that “[t]o the extent time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities.

Comment [2] to Rule 2.11 notes that “[a] judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.” 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.

Thus, the Code of Judicial Conduct places a responsibility on a judge to assure that a fair and impartial forum is afforded to litigants. This does not mean however that a judge is precluded from looking for a new job until after he/she leaves the bench. On the contrary, the Commission is of the opinion that sending out resumes to law firms, even those who may have a case before the court, is perfectly acceptable since it is up to the firm whether or not the judge gets an interview. Therefore, simply sending out resumes does not trigger disclosure or disqualification. However, once a firm asks the judge to sit for an interview, the judge is immediately disqualified from presiding over any matter involving the firm. This also holds true for any employment negotiations and/or actual employment with a firm.

A review of other jurisdictions indicate a split between disclosure and disqualification. However, the Commission is not in favor of the former as it places undue pressure on the parties or their counsel to waive the conflict. Instead, the onus is on the judge to step away from the matter. The Commission also understands that there will be times when negotiations do not result in a job offer/acceptance. The Commission believes that in those instances, a judge may resume presiding over cases involving those firm(s) following a reasonable time which depends on the specific circumstances of each negotiation. Factors to consider include but are not limited to the length of time of the negotiations, the notoriety of the discussions and whether the result was amicable. See Arizona Judicial Ethics Advisory Opinion 22-01.

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