

JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831

February 2, 2016

Re: JIC Advisory Opinion 2016-01.

Dear Ms. :

Your recent request for an advisory opinion to Counsel was recently reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: You are running for Judge in the ___ Family Court Circuit. You want to know if you can post videos of yourself on your campaign Facebook page answering questions from the general public concerning such family court issues as spousal support. You also want to know if you can post videos about procedural matters such as how to calculate child support.

To address the questions which you have raised, the Commission has reviewed Rules 3.1, 4.1(A)(10), 4.1(A)(11), 4.2(A)(1) and 4.2(B)(2) of the Code of Judicial Conduct. Rule 4.2(B)(2) states that "[a] judge or candidate subject to public election may, except as prohibited by law speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature." Importantly, Comment 6 to Rule 3.1 states that "[t]he same Rules of the Code of Judicial Conduct that govern a judicial officer's ability to socialize and communicate in person, on paper, or over the telephone also apply to the internet and social networking sites like Facebook." Rule 3.10 states that "[a] judge shall not practice law."

Rule 4.2(A)(1) states that "[a] judge or candidate subject to public election shall act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary." Rule 4.1(A)(10) states that "a judge or judicial candidate shall not make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court." Rule 4.1(A)(11) provides that "a judge or judicial candidate shall not in connection with cases controversies or issues that are likely to

come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.”

Based upon the foregoing, a judge would not be able to place videos on his or her campaign website in which the judge answers questions on family law issues because he or she would then be engaging in the impermissible practice of law. It could also constitute a potentially *ex parte* communication with someone who is likely to come before the Court. Therefore, a judicial candidate is also precluded from engaging in such activity on his or her campaign Facebook page during an election cycle. However, you are permitted to talk about general procedures and report on what statutes say such as the requisite calculations for child support. You should be very careful to ensure that the explanations do not cross the line into legal advice or discussions concerning pending or impending matters. You should also recognize that your videos are likely to generate the type of follow up questions that you cannot answer because they would be an *ex parte* communications and likely involve legal advice.

It is hoped that this opinion fully addresses the issues which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronald E. Wilson', written in a cursive style.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat