

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 8, 2016

Re: JIC Advisory Opinion 2016-02.

Dear Mr. :

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: You are running for an open Circuit Court seat in the May 2016 election. You are longtime friends with a prominent area preacher and former councilman and his wife, who is a probation officer in your county. You want to know if the preacher can serve without remuneration as your spokesman in a campaign television advertisement. According to you, he "would say, in short, that [you] would make a good judge." You want to know if it would be permissible for the preacher to do your television advertisement since he is married to a probation officer.

After reviewing your request and the correspondence which you have forwarded to our counsel, the Commission finds that the answer necessarily depends on the precise content of the television advertisement. Rule 4(B) of the Code of Judicial Conduct states that "[a] judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A)." Rule 4.1(A)(9) states that a judicial candidate "shall not knowingly, or with reckless disregard for the truth, make any false or misleading statement." Rule 4.1(A)(10) provides that a candidate for judicial office "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) states that a 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." Comments 13 and 14 to the Canon provide additional guidance:

- [13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.
- [14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

Rule 4.2(A)(3) requires judges and judicial candidates to “review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee before their dissemination.” Rule 4.2(5) requires a judge or candidate to “take corrective action if he or she learns of any misrepresentations made in his or her campaign statements or materials.”

Based upon the foregoing, you are responsible for ensuring that the content of the advertisement is in compliance with Canon 4. Furthermore, the Commission declines to address at this time whether your long standing friendship with the probation officer or the use of her husband as a spokesperson in your campaign will result in any ethical issues should you be elected and become the probation officer’s supervisor. The Commission believes the question is premature and not an issue at this time. Please do not hesitate to contact the Commission should you have additional questions, comments or concerns.

Sincerely,



Ronald E. Wilson, Chairperson
Judicial Investigation Commission