



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 • FAX (304) 558-0831

March 3, 2004

Re: JIC Advisory Opinion 2004-06

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion. In your correspondence you stated that you had received information from the , asking that you serve this year as Honorary Chair on the Committee to Commemorate the Annual Children's Memorial Flag Day. You stated that your name would be printed on their stationery. You attached information regarding the organization and asked whether it would be possible for you to comply with their request.

To address the inquiry which you have made, the Commission has reviewed Canon 1 and relevant sections of Canon 4 of the Code of Judicial Conduct. These Canons state in relevant part:

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

A. ~~An independent and honorable judiciary is indispensable to justice in our~~ society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

A. Extra-judicial activities in general. - A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge; . . .

March 3, 2004

Page Two

C. Governmental, civic, or charitable activities.

(3) Civic and charitable activities. - A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or non-legal adviser of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members subject to the following limitations:

(a) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

The Commission reviewed the information which you provided together with the relevant provisions of these Canons. There was concern that your name would appear on the letterhead of the _____, along with the names of other organizations which would appear to have issues, clients or other matters engaged in proceedings before courts on a regular basis. It would further appear that many of the organizations would be advocates in areas regarding issues or litigation. Because of this it is the opinion of the Commission that you should not appear on the letterhead or serve as the Honorary Chair on the Committee to Commemorate the Annual Children's Memorial Flag Day.

In the past, the Commission has issued an advisory opinion which was subsequently amended by the Court through an Administrative Order. Obviously it is the prerogative of the Court to determine which activity may or may not be appropriate in any given situation. A copy of this advisory opinion and the Administrative Order of the Court is attached hereto for your information.

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

Very truly yours,



Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF,II:nb
Enclosures

Administrative Order

Supreme Court of Appeals of West Virginia

WHEREAS, the problems associated with domestic violence in our court system are overwhelming. West Virginia has seen a tremendous increase in domestic violence petitions in the last few years. The number of filings in magistrate courts has increased by almost 200% since 1990, from approximately 5,200 to over 15,500 in 1997. The West Virginia Supreme Court of Appeals has made a concerted effort to address this growing increase. The Court has taken steps to improve the Court system's response to the problems associated with domestic violence, including the provision of additional training for magistrates, the creation of a fatality review system to review deaths where individuals have had contact with the court system and the employment of an attorney through a federal grant to study the problem of domestic violence matters in magistrate courts and to assist the Court in policy development.

WHEREAS, the Violence Against Women Act (VAWA) was passed by Congress in 1994 directing states to enforce domestic violence protection orders issued in other states as if they were their own. To encourage and support compliance with the provisions of the VAWA, the United States Department of Justice and the State Justice Institute sponsored an invitational conference to which West Virginia was asked to send a team. The national conference was organized and hosted by the National Counsel of Juvenile and Family Court Judges, The Pennsylvania Coalition Against Domestic Violence and the National Center for State Courts.

WHEREAS, in October 1997, West Virginia sent a multi-disciplinary team of five people to the national Full Faith and Credit Conference: Passport to Safety. The team included administrative staff from the Supreme Court of Appeals, a judge, an individual representing prosecutors, a sheriff and an individual from the West Virginia Coalition Against Domestic Violence.

WHEREAS, on return from the conference, the West Virginia multi-disciplinary team agreed to write a grant to fund a statewide full faith and credit conference in West Virginia. The grant was awarded and planning for the conference began. The purpose of the statewide conference is to "effectively implement and coordinate on a statewide basis the components of the federal Violence Against Women Act as well as the components of West Virginia's domestic violence laws regarding 'full faith and credit'."

WHEREAS, the objectives of the conference include: "1) To bring together professionals from various disciplines who work to enforce domestic violence protection orders; 2) To understand the provisions and interplay of the Violence Against Women Act and West Virginia Domestic Violence laws; 3) To develop ongoing coordinated community responses regarding the enforcement of full faith and credit in West Virginia."

WHEREAS, the Judicial Investigation Commission was asked by a family law master to provide an advisory opinion regarding the propriety of the West Virginia Supreme Court's request that family law masters, magistrates, probation officers and circuit judges participate in a statewide conference on full faith and credit of domestic violence protective orders. The family law master was reportedly concerned that the sponsor of the conference is the West Virginia Coalition Against Domestic Violence, an organization that the family law master considered to be an advocacy group.

WHEREAS, the Judicial Investigation Commission issued an advisory opinion dated December 18, 1998 finding that this Court's request to judicial officers and their employees to attend the conference invited unethical conduct since participation in the training would give the appearance of impropriety in violation of the Judicial Cannons. Specifically, the advisory opinion provides as follows:

The Commission recognizes that the training is necessary but that such participation by judges must be done within the purview of the Code of Judicial Conduct. The Commission feels that participation by judges would be appropriate if the Supreme Court would prepare or adopt the materials used in the instruction of judges, provide the instructors to do the training and assure that discussion and comments be limited to the judges within context the instruction given to them. Furthermore, a goal of the instruction of the judicial component could not be the development of ongoing coordinated community responses regarding the enforcement of the full faith and credit in West Virginia. The Commission further recommends that any material prepared or adopted by the Court contain a statement that the Court has prepared or adopted the instructional material.

WHEREAS, the practical effect of the advisory opinion is to undo the many efforts of this Court to develop and encourage judicial involvement and cross-disciplinary training, coordinating councils and other multi-disciplinary programs designed not only to improve the judicial system and the fair administration of justice with respect to the domestic violence matters, but in all areas. The advisory opinion calls into question the ethical propriety of any judicial officer's participation in any training not sponsored, authored or instructed by this Court.

WHEREAS, this Court has concluded that there is no appearance of impropriety in this matter as demonstrated by the Court personnel's participation and involvement in the organization and development of the conference.

WHEREAS, the West Virginia Code of Judicial Conduct "is intended to establish standards for ethical conduct of judges." The Commission relied upon Cannons 1, 2A and 4A regarding the upholding of the integrity and independence of the judiciary, the avoidance of impropriety, and the conduct of extra-judicial activities so as to minimize conflicts. However, the advisory opinion did not address Cannon 4B of the Code of Judicial Conduct which provides as follows:

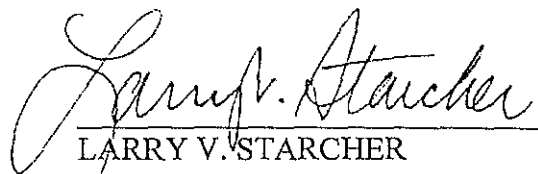
- B. Avocational Activities--A judge may speak, write, lecture, teach, and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirement of this Code.

The commentary to Canon 4B provides in pertinent part that "a judge is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice" and that "judges may participate in efforts to promote the fair administration of justice." As noted in the Preamble to the West Virginia Code of Judicial Conduct: "[o]ur legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us." Judges have an obligation to be fair and impartial arbiters of facts and law. The Court is confident that attendance at the statewide Full Faith and Credit Conference will not impinge on the independence and fairness of judges as they determine the facts and the law in individual matters.

ACCORDINGLY, and based upon all the foregoing, this Court deems it appropriate to enter this Administrative Order approving the attendance of court personnel including judges, at the West Virginia Full Faith and Credit Conference sponsored the West Virginia Coalition Against Domestic Violence scheduled for May 13 and 14, 1999.

IT IS THEREFORE ORDERED, That the Acting Administrative Director of the Supreme Court of Appeals of West Virginia record this Order and send a copy to all circuit judges, family law masters, magistrates, and probation officers.

ENTER: MARCH 12, 1999



LARRY V. STARCHER
CHIEF JUSTICE