



## JUDICIAL INVESTIGATION COMMISSION

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March 11, 2010

Re: JIC Advisory Opinion 2010-04

Dear Judge

The Commission has considered your letter asking for an advisory opinion. Your letter states that the West Virginia Court Improvement Program Oversight Board has drafted a proposed "Protocol for Judge-Led Stakeholder Meetings" to foster effective communication among the stakeholders in abuse and neglect cases. You noted that the Protocol specifically states that attendees shall not focus upon or discuss individual cases. According to the Protocol the attendees should include Circuit Court Judges; Family Court Judges; law enforcement representatives; public defenders; prosecutors; regional service providers; attorneys who frequently serve as Guardian *ad litem* or adult respondents, a representative of the local domestic violence program, a local DHHR community service manager; the local DHHR CPS supervisor; local school board administrators; director of local regional mental health centers; representatives of local child advocacy center; juvenile probation officer, mental hygiene commissioner and the local CASA agency director.

The Commission is well aware of the time and effort you exert on behalf of abused children and we do not want to do anything to impede your good work. However, after a careful review of the Code of Judicial Conduct we do have the following concerns.

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Canon 4 of the Code of Judicial Conduct is the Canon that addresses a judge's extra-judicial activities to minimize the risk of conflict with judicial obligations. The Canon particularizes what extra-judicial activity is appropriate for judges.

The Protocol for Judge-Led Stakeholder Meetings appears to fit in the description of civil and charitable activities by judges found in Canon 4C(3). Judges are permitted to "participate in civic activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties." Of particular importance to the Commission is the prohibition found in Canon 4C(3)(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 commentary to this Canon speaks to the affiliation of a judge with organizations that may come before the court for adjudication.

A Judge led meeting with "stakeholders in abuse and neglect cases" who regularly appear before the judge in contested hearings could, to those who are the respondents in those proceedings, "cast reasonable doubt on the judge's capacity to act impartially as a judge." Canon 4A.(1).

The Code of Judicial Conduct focuses upon the need for a judge to not only avoid impropriety, but also to avoid the appearance of impropriety. For those who don't understand a judge's dedication to his/her oath of office, the appearance of a judge meeting with law enforcement representatives, prosecutors, Guardians *ad litem*, domestic violence program representatives, DHHR personal, and school board administrators could "create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired." Commentary under Canon 2A.

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After reviewing the Protocol for Judge-Led Stakeholder Meetings, it is the opinion of the Commission that the activities of the judge involved in the Protocol, the individuals who would be meeting on a regular basis and the discussions which would take place in those meetings would violate the provision of Canon 4 and not permit the judge to serve. In addition to violating the language contained in the Canon and the spirit set forth in it, the perception created by such meetings would be wrong.

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "Fred L. Fox, II". The signature is stylized with large, bold letters and a prominent "I" at the end.

Fred L. Fox, II, Chairperson  
Judicial Investigation Commission