



JUDICIAL INVESTIGATION COMMISSION

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

March 22, 2011

Re: JIC Advisory Opinion 2011-07

Dear

In a recent letter to the Judicial Investigation Commission you asked for an advisory opinion as to whether membership on a committee working on systemic problems with groups that may have individuals appearing before the judge is a violation of the Code of Judicial Conduct.

The issue you presented in your letter has been addressed by the Commission on two other occasions in 2010. However, acknowledging the importance of a request from the administrative officer for the entire state court system and knowing that there have been new members appointed to the Commission since the advisory opinion was issued in October 2010, the Commission has, at your request, revisited the issue. The Commission is also sensitive to the fact that the Court Improvement Program would like to receive an opinion from the Commission approving judicial participation in Stakeholder Meetings.

It is, of course, the practice of the Commission to consider all request for advisory opinions fully and with due regard for the consequences of its opinions. However, we want to again emphasize the limited use of an advisory opinion of the Judicial Investigation Commission. The opinions are not binding on the Supreme Court of Appeals and they have limited value before the West Virginia Judicial Hearing Board: ~~"An advisory opinion is not binding on the Judicial Hearing Board or the Court, but shall be~~

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admissible in any subsequent disciplinary proceeding involving the requesting judge." Rule 2.13(d) of the Rules of Judicial Disciplinary Procedure.

With that background, the Commission addressed your request for an advisory opinion. The Commission reviewed its March 11, 2010 and October 5, 2010 opinions on the same issue as that sought in your request for an advisory opinion. The Commission noted that your request for an advisory opinion did not differentiate between "Judge Led Stakeholder Meetings" and judge membership on stakeholder committees. Our previous opinions addressed the "Judge-Led Stakeholder Meeting" program drafted by the West Virginia Court Improvement Program Oversight Board. Based upon our discussion of your request and the issue it presented, I doubt that our opinion would be any different even if you did intend for us to consider a lesser role for the judge at the committee meetings.

After reviewing the previous opinions and carefully considering the arguments you made in your February 8, 2011 letter, it is the unanimous opinion of the Commission that it can not issue an advisory opinion approving the participation of a judge on a committee that is working on systemic problems with groups that will have individuals from those groups appearing before the judge. It remains our opinion that the judicial involvement contemplated in your February 8, 2011 letter would constitute a violation of the Code of Judicial Conduct.

Your argument that the judge's activities, should be classified as either quasi-judicial activities under Canon 4C(2) or governmental activities under Canon 4C(1) did not persuade the Commission. Of critical importance to the Commission was the fact that the judge would be meeting with those individuals who, for the most part, would be representing the government in abuse and neglect cases and in juvenile cases, and many of the same individuals would be testifying at contested hearings.

The title of Canon 4 is "A Judge shall so conduct the ~~judge's extra-judicial activities as to minimize the risk~~ of conflict with judicial obligations." Canon 4 prohibits

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a judge from serving on an organization that will be engaged in proceedings that would ordinarily come before the judge or organizations that will be regularly engaged in adversary proceedings in any court. The Department, the Prosecuting Attorney and law enforcement officers regularly appear in court.

It appears to the Judicial Investigation Commission that the stakeholder meetings would of necessity discuss policy decisions of the Department, which could have a future political significance and cause the judge to appear to have taken a position on policy issues that come before the court, and imply a commitment by the judge on that policy or issue. That is not a proper role for a West Virginia Circuit Court Judge.

The Code of Judicial Conduct is directed towards encouraging and mandating that judges are to be the visible symbol of government under the rule of law. Judicial decision making must be perceived by the laity as being disinterested and unmarred by willfulness or politics. As much as it is humanly possible to do so, a Judge's motivations and other influence must not be seen as part of the judicial mentality. Judges are bound by the Canons not only in their professional but in their personal conduct. A Judge should do nothing to cause those who must appear before the Judge to question his or her impartiality.

Therefore, the opinion of the Judicial Investigation Commission remains the same: we will not be issuing an opinion that approves the proposed protocol for Judge-Led Stakeholder Meetings.

We do not agree with your opinion that the welfare of West Virginia's children will be better served if judges participate in these stakeholder meetings as part of the judge's commitment to the administration of justice. If judges are concerned about issues in abuse and neglect cases there is nothing in the canons prohibiting a judge from asking Department workers to appear before the judge to address procedural issues. There is nothing in the Code of Judicial Conduct preventing a judge from instructing law

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enforcement officers as to the proper procedure in juvenile cases.

Again, we regret that we can not endorse this program of the Court Improvement Program Oversight Board. We acknowledge the fine work of the Court Improvement Program Oversight Board and the dedication of those judges who are committed to this work, and the extra effort they spend attempting to make certain that the judicial system does serve the best interest of our children. We also thank you for taking the time to express your opinion concerning this issue and your request that we revisit the issue.

It is hoped that this correspondence fully addresses the questions which you have raised. If there is any further question regarding these matters, do not hesitate to contact the Commission.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Ronald E. Wilson", with a long, sweeping horizontal line extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

Cc:

Disciplinary Counsel
Judicial Investigation Commission