



JUDICIAL INVESTIGATION COMMISSION

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

August 30, 2016

Re: JIC Advisory Opinion 2016-17.

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. Specifically, you want to know if the Code of Judicial Conduct permits a judicial employee to publicly express his/her opposition to a proposed municipal ordinance providing protections to lesbian, gay, bisexual or transgender citizens at a City Council meeting. You also want to know what sanctions, if any the judicial employee should receive if the Code does not allow such conduct.

To answer your question, the Commission has reviewed Rules 1.2, 2.2, 2.3(A), 2.10, and 2.12(A) of the Code of Judicial Conduct, which provide as follows:

Rule 1.2 Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Rule 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.3 Bias, Prejudice, and Harassment

- (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment,

including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

Rule 2.10 Judicial Statements on Pending and Impending Cases

- (A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.
- (B) A judge 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.
- (C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).
- (D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.
- (E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Rule 2.12 Supervisory Duties

- (A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

The Comments to Rule 1.2 state that “[c]onduct that compromises or appears to compromise the independence, integrity and impartiality of a judge undermines public confidence in the judiciary.” The Comments also advise a judge that he or she must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. This proscription applies to both the professional and personal conduct of a judge.

The Comments to Rule 2.2 state that a judge must be “objective and open-minded” to ensure impartiality and fairness to all. Importantly, the Comments also recognize that “although

each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.”

Comment 2 to Rule 2.3 states that “[a] judge must avoid conduct that may reasonably be perceived as prejudiced or biased. Lastly, Comment 1 to Rule 2.10 states that “restrictions on judicial speech are essential to the maintenance of the independence, integrity and impartiality of the judiciary.”

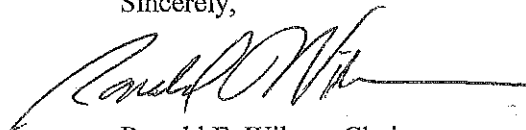
When all of these Rules are read *in pari materia*, they signify that while a judge is entitled to his or her personal, moral or religious beliefs, he/she must not publicly act on them to the benefit or detriment of others. If a judge does otherwise, he/she demonstrates a lack of fairness and impartiality. Therefore, if a judge voices disapproval of laws or proposed ordinances based on personal, moral or religious beliefs, he/she calls into question the integrity, independence and impartiality of the entire judiciary.

When these Rules are read together, they also clearly impose upon the judge a duty to ensure that his staff does not act on their personal, moral or religious beliefs to the benefit or detriment of others. Consequently, it would be improper for a judicial employee to voice disapproval of laws or proposed ordinances based on personal, moral or religious beliefs. This is because members of the public could perceive, even incorrectly, that the judicial employee’s personal, moral and religious beliefs mirror those of the judge.

Based upon the foregoing, the Commission is of the opinion that a judicial employee could not publicly express his/her opposition to a proposed municipal ordinance providing protections to lesbian, gay, bisexual or transgender citizens at a City Council meeting. Please be advised that while the Commission can render an opinion with respect to permissible conduct by a judicial employee pursuant to the Code, we have no authority to address possible sanctions, if any, as we only have jurisdiction over magistrates, family court judges, circuit court judges, supreme court justices, mental hygiene commissioners, juvenile referees, special masters, and special commissioners.

We hope this opinion fully addresses the issue 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 dark ink, appearing to read "Ronald E. Wilson", with a long horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission