



**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 29, 2019

Re: JIC Advisory Opinion 2019-10

Dear

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:

Your birthday is in May. Your spouse/domestic partner is planning a birthday celebration for you and as many as sixty family members and close friends will be in attendance. Some of the attendees are lawyers – one of whom presently practices family law in your jurisdiction. You have told your invited guests that you do not want any gifts for the occasion.

One of your closest friends wants to honor you by establishing an endowed charitable fund in your name to be managed by the Greater Kanawha Valley Foundation. The Foundation accepts donor-directed funds for charitable purposes. Generally, the Foundation will accept a fund with an initial amount of around \$3,000.00, with the understanding that it will expect the fund to increase to a minimum of \$10,000.00 in three to five years. The purpose of your charitable fund would be to benefit animal rescue organizations such as the 501(c)(3) Animal Rescue Coalition (B.A.R.C.). Your friend plans to solicit donations from the party's guests. At present, your spouse/domestic partner is aware of your friend's plan, but you know nothing of the venture as it is being kept as a surprise for your birthday.

The following questions have been posed in relation to the proposed gift. (1) Would the mere establishment of the charitable fund in your name violate any provisions of the Code of Judicial Conduct? (2) Prior to your learning of the existence of the fund,

would it violate any provision of the Code to solicit or accept contributions from close friends? (3) Prior to your learning of the existence of the fund, would it violate any provision of the Code to accept contributions from attorney friends who do not practice family law in your Circuit? (4) Would the attorney who practices family law in your circuit or his/her spouse/domestic partner be able to donate? (5) After learning of the fund, is it okay for future funds to be donated provided you do not personally solicit any contributions? (6) After learning of the fund, what involvement, if any, can you have in participating in decisions regarding which animal rescue organizations could benefit from the fund?

To address your questions, the Judicial Investigation Commission has reviewed Rules 1.2, 3.7 and 3.13 of the Code of Judicial Conduct. Rule 1.2 states that “[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.” This standard applies to both the professional and personal conduct of a judge. Comment [2] to the Rule states that “[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” Comment [3] notes that “[c]onduct that compromises or appears to compromise the independence, integrity and impartiality of a judge undermines public confidence in the judiciary.” Comment [5] sets forth the test for appearance of impropriety – “whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”

Rule 3.7 allows judges to participate in charitable organizations with some caveats. Rule 3.7(A)(2) allows judges to solicit contributions “for such an organization or entity but only from members of a judge’s family, or from judges over whom the judge does not exercise supervisory or appellate authority.” Rule 3.7(A)(5) states that a judge can make recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, “but only if the organization or entity is concerned with the law, the legal system, or the administration of justice.”

Rule 3.13(A) precludes a judge from accepting a gift or other thing of value if acceptance is “prohibited by law or would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.” Rule 3.13(B)(2) allows a judge to accept a gift or other thing of value without reporting it “from friends, relatives, or other persons including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11.” Rule 3.13(C) states that a judge may accept a gift or other thing of value and report as required by Rule 3.15 “if the source is a party or other person

including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.”

Comment [1] to Rule 3.13 states that:

Whenever a judge accepts a gift or other thing of value . . . there is a risk that the benefit might be viewed as intended to influence the judge’s decision in a case. . . . Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge’s independence, integrity, or impartiality is low. . . . As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.

Comment [2] provides:

Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge’s independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge’s disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge’s decision-making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

Comment [4] affirms that Rule 3.13 “applies only to acceptance of gifts or other things of value by a judge.” Yet, the Comment also expresses concern when a gift is given to the judge’s spouse, domestic partner or person residing in the judge’s household:

[I]t may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

Based upon the foregoing, the Commission is of the opinion that a charitable fund in your name to benefit animal rescue organizations, although noble, would violate Rules

1.2 and 3.7(A)(2) and (5) and is therefore impermissible. First, the request for donations are not limited to family members or judges of equal or greater rank. Second and more importantly, while the solicitations would not actually be made by you, your name would be used from the outset to secure donations. Therefore, members of the public might reasonably conclude, however wrong they may be, that you personally are soliciting the funds. You also could not make any recommendations about the funding since the organization that the donations would go to does not involve the law, the legal system or the administration of justice.

Nonetheless, the Commission believes that pursuant to Rule 3.13 it would be permissible for the group to make a one-time donation in your honor to an organization like as long as neither you nor your spouse/domestic partner solicit the funds. Given that one of the potential donees is a lawyer who presently appears in the Circuit Family Court, he/she should not participate in order to avoid any appearance of attempting to gain influence over you.

It is hoped that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission if you have any other questions regarding this matter.

Sincerely,



The Honorable Alan D. Moats, Chairperson  
Judicial Investigation Commission