



**JUDICIAL INVESTIGATION COMMISSION**

City Center East - Suite 1200 A  
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Charleston, West Virginia 25304  
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November 7, 2019

Re: JIC Advisory Opinion 2019-24

Dear Judge :

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:

Wife was married to Husband No. 1 and had two children who are now in their early to middle teens. They divorced in 2008. Wife then married Husband No. 2 and together they had three children. Wife and Husband No. 2 are separated and now she is dating a registered sex offender.

On October 1, 2019, you had a final hearing on a Petition for a Domestic Violence Protective Order filed by Wife against Husband No. 2. You issued an Order against Husband No. 2 and awarded custody of the couple's three children to Wife with supervised visitation to the husband. Because a CPS worker testified at hearing about Wife's relationship with the Sex Offender, you ordered that neither party was permitted to allow the minors to have any contact with the sex offender.

On November 4, 2019, Husband No. 1 filed a Petition for Modification of their divorce decree alleging in part that his children have contact with the sex offender. The Petition states that "Mr. \_\_\_\_ [sex offender] is registered on the West Virginia Sex Offender Registry for Sexually Motivated Battery. His victim was a female acquaintance between the ages of 13 and 17."

You are concerned that because Wife has custody of children with Husband No. 2 that she may be violating the DVPO. The allegation about the contact was initially provided by the children of Husband No. 1, whom you will interview *in camera* in that proceeding. If the children of Husband No. 1 disclose contact in the *in camera*

proceeding, you believe that the children of Husband No. 2 are also at risk. You want to be able to use the information in the proceeding involving Husband No. 1 in a separate proceeding involving Husband No. 2 but you are concerned about violating the confidentiality rule governing domestic violence proceedings and family court matters and thereby violating Rules 1.1 and 1.2 of the Code of Judicial Conduct. Specifically, you want to know: (1) whether information obtained from the Children of Husband No. 1 may be used in a *sua sponte* contempt proceeding involving Wife and the DVPO; and (2) whether it is ethical to allow Husband No. 2 to view *in camera* the testimony of Husband No.1's children.

Rule 6 of the Rules of Practice and Procedure for Family Courts provides in pertinent part:

- (a) All orders and indices are public records. All pleadings, recordings, exhibits, transcripts, or other documents contained in a court file are confidential, and shall not be available for public inspection; but unless the file is sealed pursuant to this rule or access is otherwise prohibited by order, any document in the file shall be available for inspection and copying by the parties, attorneys of record, guardians ad litem, designees authorized by a party in writing, and any person with standing to modify or enforce a support order. A family court judge or circuit judge may open and inspect the entire contents of the court file in any case pending before the judge's court. When sensitive information has been disclosed in a hearing, pleading, or document filing, the court may order such information sealed in the court file. Sealed court files shall be opened only by order.

Meanwhile, Rule 1.1 of the Code of Judicial Conduct states that a judge shall comply with the law, including the Code itself. 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.”

Based upon the foregoing, the Commission is of the opinion that you can use the information in the proceeding between Wife and Husband No. 1 in the matter between Wife and Husband No. 2.<sup>1</sup> Although the cases are separate, they both have

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<sup>1</sup> This opinion is distinguishable from JIC Advisory Opinion 2019-04 in which we told a judge that he could not disclose to the jail that a party in an abuse and neglect proceeding who was applying for a job there had tested positive for controlled substances when the judge learned of the information in the confidential proceeding. In reaching that conclusion, the Commission relied on Rule 3.5 of the Code of Judicial Conduct which states that “[a] judge shall not intentionally disclose or use nonpublic information

common denominators. Both actions involve the wife, her sex offender boyfriend and children. Since what happens in the case involving Wife and Husband No. 2 necessarily implicates and has a direct impact on the children of Husband No. 1 and *vice versa* and the best interest of all five children of the Wife appears to be the same and is of paramount importance. Therefore, the Commission is also of the opinion that you may allow Husband No. 2 to view *in camera* the testimony of Husband No.1's children. However, before doing so, you must at the outset advise all parties in both matters that any evidence pertaining to the children will be admissible in either action.

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

Sincerely,



Alan D. Moats, Chairperson  
Judicial Investigation Commission

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acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties." Here the judge is dealing with five children – all of whom have the same mother, all of whom may have been subjected to the same convicted sex offender and all of whom are the subject of proceedings before the Court.