



JUDICIAL INVESTIGATION COMMISSION

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

October 26, 2020

Re: JIC Advisory Opinion 2020-26

Dear Director :

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The facts giving rise to your question are as follows:

A is a volunteer who provides a voice for abused and neglected children in the court system. The statewide Association partners with counties to develop programs to create a network of volunteers. is a private charitable organization. Importantly, volunteers are not employees of the Supreme Court of Appeals of West Virginia. The Supreme Court was contacted by the Association in 2019 seeking funding for the current fiscal year. The Court determined that it was unable to provide funding in its budget to .

The Court was then contacted by a member of the West Virginia Legislature to discuss the funding request for fiscal year 2021. The legislator and representatives were informed that the Court did not believe it could provide funding from court funds or request such funding from the Legislature due to ethical concerns related to the fact that representatives appear before state courts in various cases and the Court is required to maintain a neutral and detached air in all matters. The legislator then indicated that he/she may try to obtain direct funding for in the budget. Unbeknownst to the Court, dollars was placed in its budget by the Legislature to be provided to for the 2021 fiscal year which began July 1, 2020. The Court became aware of the matter at or near the start of the current fiscal year when the money was transferred from the West Virginia Attorney General's Consumer Protection Fund to the Supreme Court's Family Court Fund. The Attorney General's Office is an agency that routinely appears in front of the Supreme Court and the Circuit Courts of this State.

It appears that the Legislature intended the Supreme Court to serve merely as a pass-through conduit of this funding to the _____ Association. It is the Court's understanding that the entire _____ would be forwarded directly to the statewide _____ Association for use by such organization as it determines is appropriate. If any such funding is to be distributed to local _____ organizations or representatives, decisions as to such distribution and the distribution itself would be made by the statewide _____ Association and not by the Supreme Court.

You want to know if the Court can transfer the money to the statewide Association this year and if there is any restriction in the Code of Judicial Conduct that would prevent the Court in future years from serving as a conduit between the Legislature and the statewide _____ association for the transfer of budget monies.

To address your question, the Commission has reviewed Rules 1.2, 2.2, 2.3(A) and 2.4(C) of the Code of Judicial Conduct which state:

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

- (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

Rule 2.4 – External Influences on Judicial Conduct

- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

The Comments to the Rules are instructive. Comment [1] to Rule 1.2 states that “[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge. Comment [2] notes that “[a] judge should expect to be the subject of public scrutiny that might be viewed as a burdensome if applied to other citizens and must accept the restrictions imposed by the Code.” Comment [3] provides 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 as “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 . . . impartiality . . . to serve as a judge.

Comment [1] to Rule 2.2 states that “[t] ensure impartiality and fairness to all parties, a judge must be objective and open-minded. Comment [1] to Rule 2.3 provides that “[a] judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Comment [1] to Rule 2.4 states:


An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials or the judge’s friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

(emphasis added).

Based upon the foregoing, the Commission is of opinion that the placement of the money in the Court’s budget for transfer to the statewide Association was inadvertent. As such, the Commission is of the opinion that a one-time transfer would not violate the Code of Judicial Conduct since it would be done to correct an error and there would be no other way for to receive the money. However, the Commission is of the opinion that such continued budget affiliations between it and the statewide Association and the Attorney General’s Office would create an impermissible appearance of impropriety that the Court is biased in favor of the two entities. Therefore, the Commission believes that it would be improper for the Court to continue to act as a budget conduit between the Attorney General’s Office and and that the Legislature should consider have the money flow from an executive branch agency.

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