



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
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August 27, 2021

Re: JIC Advisory Opinion 2021-18.

Dear Judge :

Your request for an advisory opinion was recently reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: Your case coordinator has been actively participating in a committee sponsored by the Coalition Against Domestic Violence. The Committee is called "RACCS" which stands for "Risk Assessment in Criminal and Civil Systems." Participants include members of the West Virginia Supreme Court of Appeals Administrative Office, the West Virginia Prosecuting Attorneys Institute, various law enforcement agencies, the Foundation for Rape Information Services, the Office of the Chief Medical Examiner, the Day Report Center, and the Batterer Intervention Program. It does not include any representatives from the defense bar.

As a group the Committee is tasked with reviewing the criminal and civil judicial systems to improve responses and help keep survivors safe as they move through the system. The Committee works to identify gaps, improve access and develop protocols to keep victims safe. A key component is understanding the judicial process. You want to know if it is okay for your case coordinator to continue participating in this program.

You also want to know if you can participate on the West Virginia Center for Children's Justice Task Force. The mission of this taskforce is to identify barriers to the successful investigation, prosecution and resolution of child abuse and neglect issues, and to educate and advocate for change. The Task Force is multi-disciplinary and includes representatives from the defense bar.

To address your questions, the JIC has reviewed Rules 3.1(C) and 3.7(A)(5) of the Code of Judicial Conduct which provides in pertinent part:

A judge may engage in extrajudicial activities, except as prohibited by law or the Code. However, when engaging in extrajudicial activities a judge shall not:

- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity or impartiality; . . .

Comment [4] to the Rule states that "[d]iscriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality."

Rule 3.7(A)(5) provides:

Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice and those sponsored by or on behalf of educational, religious, charitable, fraternal or civil organizations not conducted for profit, including but not limited to the following activities:

- (5) making 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; . . .

Comment [2] to the Rule notes:

Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon the judge's independence, integrity and impartiality.

In applying the foregoing, the Commission is of the opinion that neither you nor your case coordinator can participate in RACCS since the entity does not include representatives from the defense bar. As a judicial officer your immediate staff and you must remain neutral and detached in all domestic violence matters. By involving yourself in a group that supports victims, you create the perception, however wrong it may be, that you are biased in favor of victims. Therefore, your case coordinator and you should not participate in RACCS. Nonetheless, you may participate in the Center for Children's Justice Task Force since representatives of the defense bar are included in the group.

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

ADM/tat