



**JUDICIAL INVESTIGATION COMMISSION**

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

April 28, 2022

Re: JIC Advisory Opinion 2022-15

Dear :

The Commission considered your recent request for a formal advisory opinion. An administrative assistant for a circuit court judge would like to work with a state legislator on a proposal that would allow “a mother to be charged criminally if she uses drugs while pregnant and the baby is born but shortly dies from said drug use.” The administrative assistant stated that this was of particular interest to him/her “because of some things my circuit has been dealing with.”

To address your question, the Commission has reviewed Rules 1.2, 2.12(A) and 3.1(A), (B) and (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 2.12 – 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.

### **Rule 3.1 – Extrajudicial Activities in General**

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

- (A) participate in activities that will interfere with the proper performance of the judge’s judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality;

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] provides 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 [4] to Rule 3.1 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.”

The United States and West Virginia Constitutions establish three separate but equal branches of federal and state government. Legislators create the law, the executive branch enforces the law, and judges enforce the law. Therefore, it would be inappropriate for a judge to help draft a bill and/or lobby for the passage of legislation calling for the creation of a criminal offense and penalties. To do so, could create in the minds of members of the public, however wrong they may be, that the judge is pro prosecution. It could also cause the potential disqualification of the judge in any cases where someone would be charged with that crime. Because a judge is unable to participate in such activities, his/her administrative assistant is also precluded from engaging in the same. We hope that this opinion fully addresses the issue which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns or desire additional advice.

Sincerely,

  
Alan D. Moats, Chairperson  
Judicial Investigation Commission