



JUDICIAL INVESTIGATION COMMISSION

WV Judicial Tower - Suite 700 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169

February 13, 2024

Re: JIC Advisory Opinion 2024-04

Dear Judge :

Your request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. You want to know if judges can serve as certified referees/officials for WVSSAC sanctioned sports/summer activities and be paid for those services? You also want to know if judges can serve as paid coaches for public middle schools and high schools?

Specifically, you would be interested in refereeing football, basketball and/or baseball and coaching basketball. You presently help coach private spring and summer travel basketball (not school-affiliated). You would like to coach during the regular school season and the summer and to referee school-sanctioned events as time permits. You also stated that these extrajudicial activities would only occur after normal work hours and weekends. You indicated that you are not a certified referee presently but you have officiated summer league, little league, and non-school tournament games as a volunteer.

Coaches for middle school and high school are employees of the Board of Education. They sign employment contracts with the Board and are paid by the Board of Education. Boards of Education are under the executive branch of government. Referees are members of associations. Your association would be the Association. The schools arrange with the referees or association to assign referees. The schools pay the referees. For playoff games and state tournament games, you believe the WVSSAC itself pays the officials.

To address your questions, the Commission has reviewed Rules 3.1 and 3.12 of the Code of Judicial Conduct which state:

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 the frequent disqualification of the judge;
- (C) Participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity and impartiality.

Rule 3.12 Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

Comment [1] to Rule 3.1 states:

To the extent that time permits and judicial independence and impartiality are not compromised judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve Rule 3.7.

Comment [1] to Rule 3.12 noted that a judge may accept fees or salaries for extrajudicial activities as long as they are "reasonable and commensurate with the task performed." However, the judge must be mindful that "judicial duties take precedence over other activities." Comment [2] states that extrajudicial compensation may be subject to public reporting.

In JIC Advisory Opinion 2011-23, the Commission gave advice to a judge who served as a volunteer coach¹ without pay for his daughter's grade school basketball team. There was a change in protocol of how the volunteer coaches were selected; and for the first time, it became the responsibility of the County Board of Education to approve them. The Commission held that the Judge could continue to serve as a volunteer coach but that he "would also be precluded from presiding over any cases involving the County Board of Education in order to ensure the public's faith in the independence and impartiality in the judiciary."

A majority of the Judicial Investigation Commission has voted that a judge cannot serve as a school coach. A judge's first duty is to his/her position as a judge. Official judicial duties take precedence over all activities. A coach is dependent upon the Board for the position and the salary. The appearance issue is such that it would disqualify any judge/coach from presiding over any Board of Education case. Since the judge would be automatically disqualified from presiding over cases involving the Board, he/she is precluded from serving as a coach. To the extent that this advisory opinion is inconsistent with JIC Advisory Opinion 2011-23, the former opinion is overruled, and judges can no longer serve as either a paid or volunteer coach for a school system.

Referees, like judges, are supposed to be neutral and detached. Persons connected to competing schools shall not officiate unless all schools consent. Therefore, the Commission is unanimously of the opinion that a judge can serve as a referee as long as he/she complies with the stated rules governing referees. The Commission hopes that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns.

Sincerely,



Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat

¹ Since the release of the 2011 advisory opinion, volunteer coaches no longer exist in at least middle school or high school.