



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 2024-05

Dear Mr. :

Your request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission. You are candidate for circuit judge. You want to know if can post about the outcome of criminal cases on your prosecutor website as long as what is written is limited to the facts of the case. You provided the Commission with an example which listed the presiding judge by name. You are running against the Judge in the 2024 election. You correctly noted that the defendant in the case could have received a maximum sentence of 5-35 years in the penitentiary but that the judge sentenced him to 4-25 years in prison.

To address your question, the Commission has reviewed Rule 4.1(A)(10) and (11) of the Code of Judicial Conduct which state:

- (A) Except as permitted by law or Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:
 - (10) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or
 - (11) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

The Comments to the Rules are instructive:

- [7] Judicial candidates must be scrupulously fair and accurate in all statements in all statements made by them and by their campaign committees. . . .
- [10] Paragraph (A)(10) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.
- [11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices. . . .
- [14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom such as working toward an improved jury selection system or advocating for more funds to improve the physical plant and amenities of the courthouse.

In JIC Advisory Opinion 2023-23, the Commission addressed Rule 2.10(A) which is the mirror of Rule 4.1(A)(10). The Commission stated that “a judge cannot . . . comment when the topic involves a pending or impending case before any Court. A judge may . . . address Court procedures if the subject . . . is about general court procedures and not tied to any specific pending or impending matters.”

The Rule is clear that judges and judicial candidates cannot comment on pending or impending cases. Your example could be misconstrued, however wrong it may be, as criticism of your opponent’s sentence in the case. Your opponent would have no means

to counter the perceived criticism without violating the rule. Therefore, a majority of the Commission finds that you should not post about cases while running for office. However, it would be acceptable for you to place the actual sentencing order itself without further comment.

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