



JUDICIAL INVESTIGATION COMMISSION

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

April 3, 2024

Re: JIC Advisory Opinion 2024-10

Dear :

The Commission has considered your recent request for an advisory opinion. You were recently appointed circuit judge and are running in the May 2024 election for the seat. For the past 25 years you have served as a volunteer TV host on the WV Library Network and have taped over 200 monthly episodes of the same community affairs program. All of the episodes are archived and cataloged for use in public and educational programming across our State. They are also uploaded to YouTube via the Library Network Page.

According to you, both the program and network are completely non-partisan and only for educational purposes. You are not allowed to promote any sort of commercial enterprise or any political ideology or candidate. You thought it would be a good idea to educate the public generally about the Courts, including Home Confinement, Probation, Drug and Family Treatment Courts, and Mental Hygiene. You recently did an interview with a Chief Probation Officer to begin the process. Your conversation was general in nature, and it covered drug treatment, rehabilitation, incarceration, and careers in public safety and law enforcement. You believe that the program is beneficial to the public in general, and in this case, to the Bench and Bar. You want to know if you may concurrently host the program and serve as a judge.

To address your question, the Commission has reviewed Rules 2.10 (A) and (B); Rules 3.1(A), (B) and (C); and 3.7(A) of the Code of Judicial Conduct which state in pertinent part:

Rule 2.10 Judicial Statements on Pending/Impending Cases

- (A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing.
- (B) A judge shall not, 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.

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;

Rule 3.7 Participation in Educational . . . or Civic Organizations and Activities.

- (A) 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 civic organizations not conducted for profit
 - (4) appearing or speaking at . . . being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

Comment [1] to Rule 2.10 provides that the "restrictions on judicial speech are essential to the maintenance of the independence, integrity and impartiality of the

judiciary.” The Code defines “pending matter” as one “that has commenced. A matter continues to be pending through any appellate process until final disposition.” 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 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 the law.

Comment [3] notes that participation in “law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding or and respect for courts and the judicial system.”

Based upon the foregoing, the Commission is of the opinion that you can concurrently serve as judge and host of the program as long as you abide by the following caveats: (1) you must remain neutral and detached in all your presentations; (2) you discuss only topics that are not controversial, political or involve any pending or impending matters in any court across the country; (3) you abide by and adhere to Rules 2.10, 3.1 and 3.7; (4) the program is recorded on your own time; (5) participation in the activity does not interfere in any manner with your judicial duties; and (6) you do not use any court resources in the production of your show. You may have court employees and officers appear on your show but only if they agree to participate in the endeavor. You cannot compel them to appear on your show.

Thank you for your inquiry. Please do not hesitate to contact the Commission should you have any further questions, comments or concerns.

Sincerely,



Alan D. Moats, Chairperson
Judicial Investigation Commission