



JUDICIAL INVESTIGATION COMMISSION

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April 19, 2024

JIC Advisory Opinion 2024-13

Rule 2.13(c) of the Rules of Judicial Disciplinary Procedure gives the Judicial Investigation Commission the authority to promulgate advisory opinions on ethical issues pertaining to the Code of Judicial Conduct. The Rule states that “[t]he Commission may render in writing such advisory opinion as it may deem appropriate.” *Id.* The question presented is: Can a judicial officer order a recalcitrant lawyer who fails to timely prepare an order to make a donation to an entity who may or may not appear in front of the judge as a penalty.

The factual scenario giving rise to the opinion is as follows: A family court judge sent a Notice of Sanctions to various attorneys in and around his/her area. The notice said that the attorneys have not submitted orders in a timely fashion and must do so by _____, 2024. The Order stated that if any attorney failed to comply:

[A] sanction in the amount of \$50.00 per order, per day, made payable to the _____ Crisis Intervention Center or _____ Child Advocacy Center, and all other sanctions permitted by Rules 22 and 24 of the Rules of Practice and Procedure for Family Court shall be levied against counsel commencing [the following day]. The sanctions shall cease only upon receipt of said order(s) and receipt of proof of payment of any fines levied pursuant thereto.”

The entities that would receive the money are utilized by the Court on a regular basis. The order was modeled after another one issued by a different judge and purportedly upon the advice of someone unauthorized to give opinions on the Code of Judicial Conduct.

There is nothing in Rules 22 or 24 that gives the family court judge the authority to issue such a sanction. Rule 22(d) gives a judge the power to authorize the opposing attorney to prepare the order and the lawyer who failed to do so has to pay his/her attorney fees for preparing the same. It also gives the judge the option to notify the

Office of Lawyer Disciplinary Counsel if it determines that the failure to prepare the order was willfully noncompliant. Rule 24 refers to sanctions imposed in Rule 16 of the West Virginia Rules of Civil Procedure for attorneys who fail to comply with scheduling orders, attend to a scheduled hearing or conference, or is substantially unprepared or fails to participate in good faith. Rule 16 reinforces the sanctions for failing to obey a scheduling or pretrial order and states that the attorney must “pay reasonable expenses incurred because of any noncompliance with this rule, including attorney fees” RCP 37 is also mentioned in Rule 16 but relates to sanctions for failing to cooperate in discovery.

To address the question, the Commission has reviewed Rules 1.2, 1.3, 2.3(A) and 2.5(A) 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 1.3 – Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.

Rule 2.3 – Bias, Prejudice and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties without bias or prejudice.

Rule 2.5 – Competence, Diligence and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

Based upon the foregoing, it would be improper for any judge at any level to order a lawyer to make a donation to an entity who appears before him/her as a sanction for failure to timely prepare an order. Judges only have such authority as prescribed by law. The only option available in such instance outside of the specific sanctions set forth in Rule 22 is the issuance of a rule to show cause as to why the lawyer should not be held in contempt for failure to do the order(s). However, the only penalties existing under the contempt statutes are fines payable to the court. While the Commission understands

judges may have copied a past practice by another judge or sought approval from some entity other than the JIC, two wrongs do not make a right. Ethics questions must be directed to the Judicial Investigation Commission or its counsel. Asking the wrong person for advice will not shield a judge from discipline, and a defense that “everybody else does it so why can’t I” will not suffice.



Alan D. Moats, Chairperson
Judicial Investigation Commission

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