



## **JUDICIAL INVESTIGATION COMMISSION**

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### **JIC Advisory Opinion 2024-18**

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 whether it is appropriate for a magistrate to put extrajudicial activities over judicial duties.

By way of example, a magistrate who was the only one on duty during a judicial workday left the courthouse to play golf without obtaining a substitute magistrate to cover for him/her. As a result, some alleged domestic violence victims were told to come back later in the day to submit petitions and a defendant was taken to jail rather than be arraigned on criminal charges. The magistrate did return to work a of couple hours later after the Director of Magistrate Court Services was informed of the circumstances and contacted him/her.

To address the question, the Commission has reviewed Rules 1.1, 1.2, 2.1 and 3.1(A) and (C) of the Code of Judicial Conduct which state:

#### **Rule 1.1 – Compliance with the Law**

A judge shall comply with the law including the West Virginia Code of Judicial Conduct.

#### **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 2.1 – Giving Precedence to the Duties of Judicial Office**

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge’s personal and extrajudicial activities.

### **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; . . . .
- (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 [5] provides:

Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Rule 1(a) of the Administrative Rules for the Magistrate Courts states that “every magistrate court shall be open on each judicial day except Saturday. . . . [The] hours shall, as nearly as possible, correspond to the hours of the county courthouse.” The posted hours for Magistrate Court in the example are 8:30 a.m. to 4:30 p.m., Monday through Friday.

The State Supreme Court has long recognized the importance of judicial officers working their requisite hours. *In the Matter of Harshbarger*, 173 W. Va. 206, 314 S.E.2d 79 (1984), a magistrate was publicly censored for leaving his post before the end of his scheduled shift in night court. In *In the Matter of Osburn*, 173 W. Va. 381, 315 S.E.2d 640 (1984), a magistrate was on duty but remained at his house when a prisoner was brought to the office of arraignment.

In *In the Matter of Browning*, 192 W. Va. 231, 452 S.E.2d 34 (1994), a magistrate received a reprimand and fine, in part, for turning away a domestic violence victim during a normal workday. The Court found that there was clear and convincing evidence that the Magistrate told the victim that she would not assist her, then returned to her office to do paperwork and later agreed to assist another man. *Id.* The Court stated in Syllabus pts 6 and 7:

- 6. Domestic violence cases are among those that our courts must give priority status. . . . The West Virginia Legislature took steps to ensure that these cases are handled both effectively and efficiently by law enforcement agencies and the judicial system.

7. Magistrates are statutorily required to provide an individual with any assistance necessary to complete a petition for a protective order . . . . Under no circumstances should a victim of abuse be turned away from a magistrate or a circuit judge without ensuring the victim will receive prompt attention by another magistrate or judge.

In *In the Matter of Middlemas*, JIC Complaint No. 88-2018 (3/22/2019) a longtime magistrate was forced to resign and was publicly admonished by the Judicial Investigation Commission for failing to routinely arraign people while on call and for arriving up to 30 minutes late for work on numerous occasions because he was playing golf. The JIC stated:

Respondent's actions demonstrate repeated and flagrant disregard for the Code of Judicial of Conduct and a cavalier attitude toward the judiciary as a whole. He placed his golf game over the integrity of the Court, abrogated his judicial responsibilities, was a slacker with respect to duty, was chronically responsible for avoidable delays in court matters and proved untruthful when it came to his wrongdoing. Accordingly, Respondent has no right to hold the title of judge.

By choosing extrajudicial activities over a mandated workday, a judge violates the Code of Judicial Conduct. As Baseball Player Sam Ewing once said, "Hard work spotlights the character of people. Some turn up their sleeves, some turn up their noses and some don't turn up at all." Judges should strive to be the ones who turn up their sleeves and willingly pitch in. Being a judge is a full time job. It should never be treated as part-time, and extrajudicial activities should never be given preference over judicial duties. As Founding Father Thomas Paine said, "character is much easier kept than recovered."



Alan D. Moats, Chairperson  
Judicial Investigation Commission