



JUDICIAL INVESTIGATION COMMISSION

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

December 12, 2024

Re: JIC Advisory Opinion 2024-25

Dear :

Your request for an advisory opinion was recently reviewed by the Commission and the facts giving rise to it are as follows:

For several years, you have done synopses for cases arising out of the appellate courts in West Virginia. With respect thereto, you often make observations about discernible trends in the law or offer comments going to consistencies with or departures from legal precedents. You send these synopses via email to your fellow sitting judges of equal rank. For approximately four years, you have also sent them to an organization consisting of approximately two sitting judges, one retired judge, one former judge of greater rank and five attorneys. You want to know if it is permissible for you to send these synopses out to everyone "prior to the entry of a memorandum decision or signed opinion mandates or before the appeal period [to the Supreme Court of Appeals of West Virginia] has expired" without violating Rule 2.10 of the Code of Judicial Conduct. Your concern is particularly rooted in West Virginia Rule of Appellate Procedure ("RAP") 26(a).

To address your question, the Commission has reviewed Rule 2.10(A) of the Code of Judicial Conduct which provides:

- (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.

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

RAP 26(a) provides:

Issuance of the mandate terminates jurisdiction in an action before the Intermediate Court or the Supreme Court, unless by order pursuant to Rule 25(a) a petition for rehearing may be filed after a mandate has issued. Unless otherwise provided, an opinion or memorandum decision considering the merits of a case is not final until the mandate has been issued by the court.

RAP 25(a) states:

A petition for rehearing may be filed within 30 days of release of any memorandum decision or opinion of the Intermediate Court or the Supreme Court that passes upon the merits of an action unless the time for filing is shortened or enlarged by order. In those instances when the time period for issuance of the mandate is shortened and the clerk is directed to issue the mandate in accordance with the time frame, the Intermediate court or the intermediate Court or the Supreme Court shall set forth by order the deadlines for filing, if any.

Based upon the foregoing, the Commission finds that a judge may not publicly comment on any pending or impending case until it has been decided, the mandate has issued and any potential appeal period, including the time frame set forth in RAP 25(a) and 26(a), has expired. 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