



JUDICIAL INVESTIGATION COMMISSION

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

December 18, 2024

Re: JIC Advisory Opinion 2024-26

Dear :

Your request for an advisory opinion was recently reviewed by the Commission. You are asking follow-up questions to JIC Advisory Opinion 2024-25. Specifically, you want to know:

- (1) May a judge, as an education service to his or her colleagues, provide a neutral and unbiased case synopsis, including a recitation of facts and a summary of possible new points of law or applications of existing law, following the release of a new opinion? As examples, this could be via an internal email to colleagues, or as part of an event organized by the Administrative Office's Education Division. I note that Rule 2.9(A)(3) provides that judges may consult with each other to aid in carrying out their adjudicative responsibilities, as long as they do not receive factual information not in the record and abrogate their responsibility to decide the matter. Can you please confirm that the prohibition on "public" statements in Opinion No. 2024-25 does not include internal discussions, including any educational case synopsis regarding new opinions, among judges and judicial staff?

Answer: The Commission unanimously finds that judges may as an education service to their colleagues provide a neutral and unbiased case synopsis as long as it truly is a synopsis and is done in a neutral and unbiased manner. We cannot say that all internal discussions are exempted from "public" statements pursuant to JIC Advisory Opinion 2024-25. While you correctly cite Rule 2.9(A)(3), the analysis must consider the latter

half of Rule 2.10(A) dealing with judicial comments on pending and impending cases which states that “a judge [shall not] make any **nonpublic** statement that might substantially interfere with a fair trial or hearing” (emphasis added). The Rules contained within the Code of Judicial Conduct are meant to be read *in pari materia*. Therefore, all nonpublic discussions for purposes other than educational can only ever be considered on a case by case basis based on both Rules.

2. May a judge cite to a new opinion during a hearing or in an order prior to the issuance of a mandate and the expiration of an appeal period? I note that Rule 2.10(D) provides that a judge may make public statements regarding pending or impending cases in the course of official duties. Can you please confirm that a judge may discuss the application of a new case during a proceeding or in an order as part of his or her official duties without violating the intent of Opinion No. 2024-25?

Answer: Yes. The Commission is unanimously of the opinion that this is the dividing line of acceptable public comment since drafting orders and opinions are part of a judge’s official duties as stated in Rule 2.10(D) and opinions/orders are subject to review. Again, judges should be mindful that Rule 26(a) of the Rules of Appellate Procedure states that “[u]nless 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.”

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