

Wyoming Supreme Court Judicial Ethics Advisory Committee W.S.C.J.E.A.C. Advisory Opinion 2016-04

QUESTION PRESENTED

Can a Circuit Court Judge participate as a member of a domestic violence council that discusses and engages in legislative reform efforts related to the prevention, treatment and punishment of domestic violence and stalking?

RESPONSE

The Committee answers no to the question presented.

BACKGROUND

The requesting judge has been solicited to become a member of a newly-formed domestic violence prevention council based in the county where the judge presides. The council is a multi-disciplinary group representing a cross-section of agencies and organizations involved in the prevention of, and response to, domestic violence and stalking. Other members of the council include a sheriff's office representative, treatment providers, victim witness coordinators, probation and parole officers, and other individuals involved in local domestic violence services. To assist in our review, the requesting judge provided the Committee specific information related to the purposes and activities of the council. The primary purposes and activities of the council appear to be:

- 1) The improvement of communication, coordination and implementation of services amongst the member agencies and organizations;
- 2) The review and discussion of current laws pertaining to domestic violence, stalking, strangulation and protection orders; and
- 3) Lobbying efforts to effect changes in the law related to the prevention, treatment, and increased punishment for domestic violence and stalking offenses.

Due to the purpose and activities of the council, this Committee believes that the judge's membership in such an organization at the local level would violate the Code of Judicial Conduct.

APPLICABLE RULES OF THE WYOMING CODE OF JUDICIAL CONDUCT

Canon 1 of the Wyoming Code of Judicial Conduct states:

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Rule 1.2 states:

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 states:

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

Canon 2 of the Wyoming Code of Judicial Conduct states:

A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule 2.4 (B) states:

A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgement.

Rule 2.4 (C) states:

A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Canon 3 of the Wyoming Code of Judicial Conduct states:

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Rule 3.1(C) states:

A judge shall not participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

DISCUSSION

This Committee has been asked to evaluate whether the requesting judge's membership in a domestic violence prevention council would violate the Code of Judicial Conduct (hereinafter "Code"). The purposes and activities of this specific council are the primary factors that guide this opinion.

Judges are required to act "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 1.2]. Consequently, judges are required to avoid extrajudicial "activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." [Rule 3.1 (C)]. In this matter, the requesting judge presides in a circuit court. Circuit courts have primary jurisdiction over civil and criminal domestic violence and stalking cases. Thus, circuit court judges should anticipate heightened scrutiny for their involvement in any extrajudicial activities that relate to those areas of the law. In the request for this opinion, the judge expressed concern that membership in the council could create an appearance of impropriety. This Committee shares those concerns and believes that such membership¹ would create an appearance of impropriety in violation of Rule 1.2 and 3.1 (C).

This Committee is also concerned with a judge's membership in organizations actively involved in lobbying for legislative change of the very state statutes the judiciary must interpret and enforce. Not only is such membership a violation of Rule 1.2 and 3.1 (C), it may have the propensity to implicate other rules of Code. For instance, judges must avoid "abuse [of] the prestige of judicial office to advance the personal or economic interests of the judge or others, or knowingly allow others to do so." [Rule 1.3]. Because of the prestige of the judicial office, the mere fact of the judge's membership on the council may be used by the organization as a tool of credibility to advance the legislative interests of the organization or its other members. In addition, judges "shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment[.]" or "convey or permit others to convey the impression that any person or organization is in a position to influence the judge." [Rule 2.4 (B) and (C)].² When an organization publicly lobbies for certain legislative changes, such as increasing criminal punishment for domestic violence and stalking offenses, it may convey the perception that the organization or its members exert improper influence on the judge through his or her membership in the organization.

¹ While this Committee advises against "membership" in the council, the Committee believes that it is permissible for the judge to infrequently serve as a guest speaker to discuss or consult on issues related to domestic violence and stalking laws and the role of the judicial system. See Rule 3.1; Comments [1] and [2].

² The Comment for Rule 2.4 states: "An independent judiciary requires that judges decide cases according to the laws and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is *perceived* to be subject to inappropriate outside influences." [Emphasis added].

This committee recognizes it has always been the case that members of the judiciary, properly, have been included in commissions or groups dedicated to improvements in the law in specific areas, for instance the Governor's Council on Impaired Driving and the Domestic Violence Elimination Council. These are distinguishable from the local committee here as such state-wide efforts do not implicate a member-judge in specific cases, or involve individuals who serve together appearing in front of that judge. They have some form of open meetings or public input that allow all points of view, and their size and methods of operation allow for a member-judge to recuse from problematic activity such as lobbying.

CONCLUSION

We believe that the requesting judge's membership on this local domestic violence prevention council would undermine the judiciary's impartiality, integrity, independence, and public confidence. Therefore, we believe such membership is prohibited by the Code.

FINALIZED AND EFFECTIVE this 16th day of November, 2016 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.