

Wyoming Supreme Court Judicial Ethics Advisory Committee
W.S.C.J.E.A.C. Advisory Opinion 2020-01

QUESTION PRESENTED

Can a circuit court judge take on extra-judicial employment involving data collection, interpretation and dissemination of information and development of processes related to driving while under the influence laws?

RESPONSE

The Committee answers no to the question presented.

BACKGROUND

The requesting judge is a full-time circuit court judge who receives a salary of \$145,000 per year. In addition to that position, the circuit court judge is seeking a part-time paid position with the American Bar Association Judicial Division to serve as the Region 8 Judicial Outreach Liaison (RJOL). The part-time position requires the applicant to have a law degree and is preferred to be either a sitting or retired judge with experience handling impaired driving cases. The successful applicant for the RJOL position would receive compensation of \$2,000 per month for a total of \$24,000 a year. The position is part of “a cooperative agreement between the National Highway Traffic Safety Administration (NHTSA) and the American Bar Association (ABA).” RJOLs function as “educators, writers, consultants, and liaisons, to share the latest research on impaired driving with the judges of their Region. In addition to informing sentencing and interventions in this manner, RJOLs can also provide important insight to policy makers attempting to improve impaired driving traffic safety.”

There is an expectation that the successful applicant will devote approximately twenty hours per month to the position. Specific duties of the RJOL position are numerous and extensive as set forth in the provided documentation. Several duties require cooperation, planning and reporting to the ABA, NHTSA and other highway safety officials.

APPLICABLE STATUTES AND RULES OF THE WYOMING CODE OF JUDICIAL CONDUCT

Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

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

Rule 1.1 Compliance with the Law.

A judge shall comply with the law,* including the Code of Judicial Conduct.

Rule 1.2. Promoting 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 knowingly* allow others to do so.

Canon 2. A judge shall perform the duties of judicial office.

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

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 2.2. Impartiality and Fairness.

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

Rule 2.4. External Influences on Judicial Conduct.

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

(C) 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. A judge shall conduct the judge's personal and extrajudicial activities.

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. 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:

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality;*

Rule 3.11. Financial, Business, or Remunerative Activities.

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

- (1) a business closely held by the judge or members of the judge's family;* or
- (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.*

Rule 3.12 Compensation for Extrajudicial Activities.

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law* unless such acceptance would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

Comment. — [1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

W.S. § 5-9-118. Judge may be district court commissioner; private practice of law prohibited; magistrate of circuit court permitted to practice law.

A judge of a circuit court shall devote full time to the office and may not engage in the private practice of law. . . .

W.S. § 5-9-125. Court continuously in session.

The circuit court shall be continuously in session.

W.S. § 5-9-126. Business hours; judge to be always available for criminal matters.

Circuit courts shall be open for the transaction of business during regular business hours, and in criminal matters a judge, magistrate or district court commissioner shall be

available at all times for fixing and accepting bail, issuing warrants including search warrants, and conducting arraignment proceedings.

DISCUSSION

This Committee has been asked to consider whether the requesting judge's employment as an RJOL would violate the Code of Judicial Conduct (hereinafter "Judicial Code"). The entities involved in this position and the specific duties required of the RJOL are the primary factors that guide this opinion.

Judges are required to comply with the law. Full-time employment is not defined for judges. Other definitions of full-time employment include working 8 hours per day and forty hours per week. *Greub v. Frith*, 717 P.2d 323, 325 (Wyo. 1986). Judges must 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)(asterisks omitted). 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)(asterisks omitted). In this matter, the requesting judge presides in a circuit court. Circuit courts have jurisdiction over some civil and criminal driving while under the influence and other driving and alcohol related offenses. Thus, circuit court judges should anticipate heightened scrutiny for their involvement in any extrajudicial activities that relate to those areas of the law and as would relate to their availability and compensation. In the request for this opinion, the judge did not express concern that this position would create an appearance of impropriety. However, this Committee has concerns about the involvement of a well-known opponent of driving and alcohol violations in funding and oversight of the position. This significant involvement could create an appearance of impropriety in violation of Rule 1.2 and 3.1(C). Moreover, this Committee has serious concerns that receiving compensation of \$24,000 a year in addition to the judge's full-time salary would be improper and if not improper, would create an appearance of impropriety, especially when considering the RJOL position would require approximately 20 hours of part-time work while performing the judge's full-time duties that include being available at all times for fixing and accepting bail, issuing warrants including search warrants, and conducting arraignment proceedings.

This Committee has additional concerns as relating to the duties of the RJOL that may involve active lobbying for legislative change of state statutes that the judiciary must interpret and enforce. These duties may have the propensity to implicate a violation of other rules of the Judicial 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)(asterisks omitted). Because of the prestige of the judicial office, the mere fact of the judge’s involvement may be used by an organization as a tool of credibility to advance the legislative interests of a certain 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)).¹ When an organization publicly lobbies for certain legislative changes, such as increasing criminal punishment for driving or alcohol related offenses, it may convey the perception that the organization or its members exert improper influence on the judge through his or her extrajudicial employment. This concern is primarily directed to the involvement of NHTSA in the role served by the RJOL.

This Committee recognizes it has always been the case that members of the judiciary 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 somewhat similar to the role being sought in this matter, however, they are distinguishable in that they are not paid positions, there are not specific duties or requirements to fulfill in order to receive a paycheck, and they are supported by a State specific government entity for which a circuit court judge is already employed.

CONCLUSION

The part-time paid employment being considered, even if not specifically precluded by law or rule, would be contrary to being wholly devoted to the full-time service statutorily required by a circuit court judge. The Committee also finds that the RJOL position has the significant involvement of a well-known national organization that lobbies for laws related to those primarily adjudicated by circuit courts in Wyoming. This involvement could further undermine the judiciary’s impartiality, integrity, independence, and public confidence. Therefore, this extrajudicial employment is not endorsed by this Committee.

FINALIZED AND EFFECTIVE this 1st day of October, 2020 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.

¹ 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.)