

May 26, 2004

The Honorable Terry Crabtree
State of Arkansas Court of Appeals
Justice Building
625 Marshall
Little Rock, Arkansas 72201

Re: Opinion No. 2004-4
Sex Offenders Assessment Committee

Dear Judge Crabtree:

You have requested our opinion as to whether you should serve on the Sex Offenders Assessment Committee. This committee is established under Arkansas Code Annotated 12-12-911 *et. seq.* Among its several charges, the committee is charged with promulgating guidelines and procedures for the disclosure of relevant information and the extent of the information to be disclosed including the level of the offender's dangerousness and the offender's pattern of offending behavior. It shall also develop an evaluation protocol for preparing reports to assist courts in making determinations against an offender and even setting qualifications for the examiners themselves.

Arkansas Code Annotated 12-12-913 (b) provides that "Local law enforcement agencies having jurisdiction shall disclose, in accordance with guidelines promulgated by the Sex Offenders Assessment Committee, relevant and necessary information regarding offenders to the public when the disclosure of such information is necessary for public protection." In other words, you as a judge and a member of the committee will determine what information is relevant and necessary and when disclosure is necessary.

Canon 4 C (2) states in part that, "A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. Work by a committee such as this one could result in the improvement of the administration of justice. On the other hand, other factors must be weighed.

The guidelines and procedures of this committee and their application in individual cases certainly have the potential of being challenged in court and Canon 4 A provides in part that "A judge shall conduct all of the judge's extra-judicial activities so that they do not: (1) cause reasonable doubt on the judge's capacity to act impartially as a judge;.... and (3) interfere with the proper performance of judicial duties." Canon 3 A provides that the judicial duties of a judge

take precedence over all the judge's other activities. Canon 4 provides that a judge should regulate his extra-judicial activities to minimize the risk of conflict with his duties. See our Opinion Number 93-01 and the quotation in that opinion from Judicial Conduct and Ethics, by Shaman, Lubet and Alfini, 1990, Section 9.04 at page 257.

Another issue of concern is the sometimes allusive “appearance of impropriety” in Canon 2. To us the Sex Offenders Assessment Committee, while its charge is a very good thing, is just a bit too close to the law enforcement and prosecutorial side of our adversarial system. See 99-04 and 99-07. This area of interpretation of the Code is often a difficult judgment call. See 96-01 where we approved membership on the Policy and Planning Board of the Division of Youth Services of the Department of Human Services. In that case, the connection of a particular juvenile to a particular service organization was not determined by this board. The Sex Offenders Assessment Committee, among other duties, develops evaluating protocol to assist courts in making determinations as to who is a sexually violent predator, developing qualifications for and qualifying examiners.

Based on our reasoning set forth above it is our opinion that you should not serve on the Sex Offenders Assessment Committee. A judge’s insight on matters addressed by the committee would be very valuable but there are other ways for the committee to obtain the views of the judiciary. We commend you for your interest in this vital subject and your willingness to devote your time to worthy causes.

Very truly yours,

Edwin Alderson
For the Committee