

March 3, 2004

The Honorable Mary Ann Gunn  
Circuit Judge  
Fourth Judicial District, Fourth Division  
Post Office Box 4640  
Fayetteville, Arkansas 72702-4640

Re: Advisory Opinion No. 2004-01

Dear Judge Gunn:

In your letter dated February 12, 2004 you stated that in addition to your duties as Circuit Judge you voluntarily serve as judge for the Washington and Madison County Drug Court. You also stated that a group of Northwest Arkansas citizens intend to create a non-profit charitable foundation to fund testing, residential treatment and other treatment services for indigent participants in drug court and that they intend to name it "Washington/Madison Counties Drug Court Foundation. You stated that you will not serve as an officer or member of the board of the foundation and that you would not participate in the solicitation of funds or serve as a speaker or guest of honor at any of the fund-raising events. You also stated that it would be unlikely that the foundation or its officers or directors would be an entity that would ordinarily come before you as a judge or frequently be engaged in adversarial proceedings in your court.

You first asked: "If the proposed Foundation is created, may I, as judge of the Washington and Madison Counties Drug Court, permit funds from a private foundation to be paid to assist indigent drug court participants in obtaining necessary testing and treatment services during those occasions when funds to continue their participation would otherwise be unavailable?" Stated quite simply, there is nothing in the Code that would indicate that our answer should be anything other than the affirmative. Our answer is limited to the applicability of the Code and we cannot venture an opinion on whether some statute might be applicable here.

Your second question was: "Does the proposed name of the Foundation 'Washington/Madison Counties Drug Court Foundation' violate Canon 4C(3) (b) (I) or

other Canons related to lending the judge's name or official capacity to a fund-raising activity?" We have taken a firm position concerning judge's activities in fund-raising. See Opinion 93-03, April 8, 1993. The facts in your case are not the same. The foundation itself is raising the funds and you are not participating in any way. The Code does not prohibit this name of the foundation.

Your last question was would you "be obligated to recuse in the event of adversarial proceedings involving: (a) The Foundation and third parties? (b) A Board member of the Foundation and a third party or parties? (c) A business or organization affiliated with a Board member and a third party or parties?" The matter of recusal is left to the judicial discretion and the arguments of the litigants and we agree with your conclusion that you should recuse in litigation involving the Foundation. We are reluctant to give advice on recusal matters. A judge has broad discretion in this area and therefore we cannot answer (b) or (c). The answer would lie in your evaluation of the particular circumstances of the situation in reference to the Code and case law.

The Committee should like to commend you for your service in Drug Court and for the excellent brief that you submitted under Rule 3.

Very truly yours,

Edwin B. Alderson, Jr.  
For the Committee