



Judicial Ethics Advisory Committee

MEMBERS:

Hon. Howard W. Brill
Supreme Court Chief Justice (Former)

Judy Simmons Henry
Attorney

August 24, 2022

Brian Vandiver
Cox, Sterling, Vandiver & Botteicher
8201 Cantrell Road, Suite 230
Little Rock, Arkansas 72227

Dear Mr. Vandiver:

JEAC Opinion 2022-2

Your letter of May 20 states that you are writing at the request of Senator Alan Clark and are seeking an advisory opinion from this committee. Your letter refers to appearances in January 2021 and March 2021 by three judges (Circuit Judge Cathi Compton, Circuit Judge Michelle Huff, and Circuit Judge Hamilton Singleton) before legislative committees. Your letter states that they spoke, on behalf of Arkansas Judicial Council, in regard to proposed legislation on child custody.

Discussion:

1) The governing provision is Rule 3.2:

Rule 3.2 - Appearances Before Governmental Bodies And Consultation With Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, the administration of justice, or matters or proposals affecting the judiciary;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

The earlier version of this provision was interpreted in Griffen v. Arkansas Judicial Discipline and Disability Commission, 355 Ark. 38, 130 S.W. 3d 524 (2003).

2) Since its creation in 1991, this committee has issued opinions as to proposed action. Our procedural rules state:

3. Requests for judicial ethics advisory opinions shall relate to prospective conduct only and shall contain a complete statement of all facts pertaining to the intended conduct together with a clear, concise question of judicial ethics. The identity of the individual, whose proposed conduct is the subject of the request, shall be disclosed to the Committee. The requesting individual shall include with the request a concise memorandum setting forth his or her own research and conclusions concerning the question and the statement that the matter is not the subject of a pending disciplinary proceeding. Requests shall not be accepted or referred for opinion unless accompanied by this memorandum.

This rule makes it clear that advisory opinions shall address only whether an intended, future course of conduct violates the Arkansas Code of Judicial Conduct. In contrast, you have asked us to discuss and issue an opinion as to actions in the past, not proposed future action.

3) The history of this committee reveals that it was created to give guidance to members of the judiciary as to their proposed conduct. Your request goes to the past conduct of other persons. This committee has never issued opinions in such a situation.

For any relief as to their past conduct, your remedy is to bring the matter to the attention of the disciplinary authority, namely the Judicial Discipline and Disability Commission.

4) Issues of recusal in pending or future actions are matters for judicial decisions. This committee has refrained from giving advice on recusals in individual matters.

5) Fairness dictates that it was appropriate that you notify the three circuit judges of your request.

For the preceding reasons it is not appropriate for this committee to issue any statement or opinion as to the actions of these three judges that occurred 18 months ago.

For the Committee,

Howard W Brill
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Judy Simmons Henry joins