

May 6, 2003

The Honorable Vicki S. Cook
Circuit Judge, Division II
18th Judicial District-East
Garland County Courthouse
224 Hazel Street
Hot Springs, Arkansas 71901

Re: 2003-02

Dear Judge Cook:

In your letter dated April 15, 2003 you stated that you have been asked to serve on the Arkansas Commission on Child Abuse, Rape and Domestic Violence and possibly to chair the Commission. You asked for our opinion as to whether this service would be in violation of the Arkansas Code of Judicial Conduct.

Arkansas Code Annotated 20-82-201 creates the Commission in question and provides that it will be composed of twenty-five persons from a variety of professions and areas of expertise including a Municipal Judge or Circuit Judge and a Chancery Judge. The substantial weight of advisory opinions in this area are to the effect that the mere fact that legislation provides for judges to be on certain governmental entities does not in itself preclude an independent evaluation based on ethical standards. Also of interest is that in the composition of the Commission set forth in the statute there is great diversity including, among many others, a prosecuting attorney and a defense attorney. This is a positive element when the numerous other factors are weighed. See Alaska Advisory Opinion 2000-1 and Utah Informal Opinion 98-6.

Canon 4C2 provides in part: “(2) 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.” (*Emphasis supplied*) If this governmental Commission does not meet this strict standard you should not accept appointment. The fact that this particular Commission is advisory only is not a significant issue under the Code. Arkansas Code Annotated 20-82-206 sets forth twelve enumerated areas that are the responsibility and authority of this Commission.

Some, but not all advisory committees have opined that a judge may be a member of a commission which has a broader scope if the judge limits his or her participation only to the matters concerned with the improvement of the law, the legal system or the administration of justice. It is our opinion, as in South Carolina, Utah and Alaska, that a judge may serve in a partial capacity on a commission. See South Carolina Advisory Opinion 8-1996; Utah Advisory Opinion 94-02 and Alaska Advisory Opinion 2001-1.

As a general proposition, we believe this Commission is concerned with the administration of justice and the legal system, and that a judge may serve on the Commission in a partial capacity. However, certain proposed functions or tasks of the Commission present particular dangers that must be addressed. We will deal with these issues in the same numerical order as they appear in the Act:

(1) Administering and disbursing funds through the Children's Justice Act and grants. Should you accept the appointment you should refrain from participating in this area. Your participation in this area will of necessity cause you to deal with individuals or agencies that may appear in court and would cast reasonable doubt on your capacity to act impartially. Canon 4A (1)

(2) Receiving and expending grants and donations for the purposes under the act. If you do determine to accept the appointment you should not be involved in any way in fund-raising. This would be in violation of Canon 4 D and other sections of the Code.

(5) Coordinated investigation and service delivery to child victims of severe maltreatment. Should you accept the appointment you should not be involved in this area. It could result in a conflict of interest and you could possibly be dealing with persons who could likely appear in your court. This could give rise to the appearance of impropriety and also result in a violation of Canon 4B.

(6) Reviewing instances of child deaths. A strong general consensus of advisory opinions in this area is to the effect that a judge may not participate on a commission that conducts fatality reviews. See West Virginia Advisory opinion (February 16, 2001); Alabama Advisory Opinion 97-635 and Georgia Advisory Opinion 174 (1992). Should you accept the appointment you should absolutely decline to be involved in this area.

(7) Support, coordination and technical assistance to providers of services for victims. Note our comments in Number 5 above.

(9) Advise the Governor. This could create a problem of separation of powers and your participation in this area should be weighed carefully. Canon 4 C (1).

(10) Contract and be contracted with. You should not be involved in these matters for the Commission. To negotiate or otherwise deal in contract matters could create a conflict of interest, would demean the judicial office and improperly use the prestige of judicial office.

A portion of the Comments under 4C(2) is quoted as follows: “*The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.*” While our decision in this opinion is a close one, if in your opinion your service on this Commission will not violate the spirit of this Comment and other relevant provisions of the Code we are not prepared to opine that your service will necessarily be in violation of the Code of Judicial Conduct. See Arkansas Advisory Opinion 96-01. It is our opinion that you should not serve as chair.

If you choose to accept the appointment we urge you to remember that the duties and the scope of your service may be subject to change and this makes it necessary for you to reexamine regularly the role of this Commission and your participation.

Very truly yours,

Edwin Alderson
For the Committee

Post Script: See “Serving on Governmental Commissions, What are the limits for Judges” by Cynthia Gray, Volume 86, Number 4, Judicature, January-February 2003. This committee has relied heavily on this excellent article and the citations contained therein written by the Director of the Center for Judicial Ethics at the American Judicature Society (cgray@ajs.org). We strongly recommend to you and others relying on this opinion to read this article.