

ADMINISTRATIVE LAW JUDGE ADVISORY OPINION NO. 2011-01

Issued on October 6, 2011 By The

WEST VIRGINIA ETHICS COMMISSION COMMITTEE ON STANDARDS OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES

OPINION SOUGHT

An **Administrative Law Judge** asks if the Code of Conduct for Administrative Law Judges prohibits an Administrative Law Judge from traveling to and from hearings with members of the agency when the agency is a party to the underlying complaint.

FACTS RELIED UPON BY THE COMMISSION

The requester is an Administrative Law Judge (ALJ) for a state agency which hears cases at its headquarters in Charleston, as well as at various locations around the state. In the past, the ALJs always drove to the off-site hearings alone to avoid the appearance of impropriety. After consulting with Ethics Commission staff, the agency head is now encouraging ALJs to carpool with agency staff members to save money.

The Requester has indicated that, absent a formal advisory opinion, she does not feel free to carpool. There is nothing in the record to indicate that the agency head has suggested that ALJs carpool with staff in an attempt to influence the outcome of the ALJ's decisions in the agency's favor.

CODE PROVISIONS AND LEGISLATIVE RULES RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5a(b) provides, "In accordance with the provisions of chapter twenty-nine-a of this code, the commission, in consultation with the West Virginia state bar, shall propose rules for legislative approval establishing a code of conduct for state administrative law judges...."

In accordance with W. Va. Code § 6B-2-5a(b), the Commission promulgated the Code of Conduct for Administrative Law Judges.

W. Va. CSR § 158-13-4 (2006) reads, in pertinent part:

4.1.a. An independent and honorable administrative judiciary is indispensable to justice in our society. An administrative law judge shall participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards of conduct so that the integrity and independence of the administrative judiciary will be preserved. The provisions of this rule should be construed and applied to

further that objective.

4.2. A state administrative law judge shall avoid impropriety and the appearance of impropriety in all activities.

4.2.a. An administrative law judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary.

ADVISORY OPINION

The Code of Conduct for Administrative Law Judges requires that ALJs avoid impropriety and the appearance of impropriety in all activities. The Requester has indicated that, if members of the public saw her get out of a car with staff, it would create the appearance of impropriety. As this Committee has stated in previous advisory opinions, the Code of Conduct seeks to uphold the highest standards of conduct to preserve the integrity and honor of the administrative judiciary. See W. Va. CSR § 158-13-4.1 (2006).

As set forth in the fact section, there is no suggestion that the agency head has proposed carpooling in an effort to exert pressure on the ALJ, nor is there any reason to believe that an ALJ would rule more favorably as a result of the proposed arrangement. Even if there is no **actual** impropriety because staff and the ALJ refrain from discussing the pending matter (or any other pending matter) during their drive together, there is still an **appearance** of impropriety. The Code requires ALJs to avoid impropriety **and the appearance of impropriety in all activities**.

Thus, pursuant to W. Va. CSR § 158-13-4.2 (2006), this Committee finds that the Code of Conduct for ALJs prohibits an Administrative Law Judge from traveling to and from hearings with members of the agency when the agency is a party to the underlying complaint. While the agency head should be commended for attempting to control costs, there are times, as here, when the circumstances warrant the increased cost to the agency. This Committee stated in ALJ Advisory Opinion 2010-02:

This Committee is sensitive to the burden its limitations may impose upon agencies This Committee is equally mindful, however, of the importance of maintaining the integrity of the administrative judiciary. Public confidence in the impartiality of the administrative judiciary is maintained by the adherence of each ALJ to the ALJ Code of Conduct. This Committee must weigh and balance the Agency's needs with the public's potential perception of impropriety....

This advisory opinion is limited to questions arising under the Code of Conduct for Administrative Law Judges, W. Va. CSR § 158-13-1 through 11 (2006), and does not purport to interpret other laws or rules. This opinion has precedential effect and may be relied upon in good faith by other administrative law judges, unless and until it is amended or revoked, or the law is changed. W. Va. CSR § 158-13-1 through 11(2006).

S/S 10-6-2011

Jonathan E. Turak, Committee Chairperson