



JUDICIAL STANDARDS COMMISSION STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2020-01

April 9, 2020

QUESTION:

Under what circumstances may a judge participate in truancy court programs created by local school districts?

CONCLUSION:

While judges may attend school programs to generally educate parents and students about truancy-related issues and court processes, judges should not participate as volunteer “judges” in school-sponsored truancy intervention programs in which the judge engages directly with specific at-risk families, appears to “preside” over dockets, or participates as a member of a “truancy team” to assist a particular family or review the details of truancy issues in specific cases. Judges also should avoid any participation that suggests that the judge is exercising any official judicial duties as part of the program or is compelling attendance in the program, such as by sending a “summons” or other notices to families directing them to appear in court or elsewhere for school-sponsored programs.

DISCUSSION:

Canon 4 provides generally that a judge may engage in outside quasi-judicial activities, including those relating to the educational system. Canon 4A through 4C describe generally the types of permissible quasi-judicial activities, including speaking, writing, lecturing and teaching (Canon 4A), appearing at public hearings or consulting with officials (Canon 4B), and serving on the boards of civic, charitable or governmental entities (Canon 4C). Because judges have a duty to hear and decide cases, however, they must avoid civic activities that would require frequent disqualification or would otherwise reasonably call into question the judge’s ability to be fair and impartial. As such, Canon 4 places limits on a judge’s quasi-judicial activities and requires that such activities may be undertaken “subject to the proper performance of the judge’s judicial duties”

and only if such activities “do not cast substantial doubt on the judge’s capacity to decide impartially any issue that may come before the judge.” On a more general level, Canon 2A also requires that judges conduct themselves “at all times in a manner the promotes public confidence in the integrity and impartiality of the judiciary.” To further ensure that judges are perceived as impartial, Canon 3C requires judges to recuse themselves in cases in which their impartiality may reasonably be questioned, including where the judge has “personal knowledge of disputed evidentiary facts concerning the proceedings” (Canon 3C(1)(a)) or where the judge “has been a material witness” concerning the matter in controversy (Canon 3C(1)(b)). Finally, under Canon 2B, judges are also prohibited from using the prestige of the judicial office to advance or promote the interests of non-judicial entities, which would include programs promoted by local school districts no matter how beneficial to the community.

In keeping with these rules, judges should not participate in truancy intervention programs in which the judge is expected to meet individually with parents, school counselors, prosecutors and others to evaluate the facts and develop strategies to address that specific family’s truancy issues. This includes “presiding” over informal truancy dockets in schools or courtrooms or otherwise appearing as a “judge” when meeting with families outside of official court proceedings. Having such personal involvement with a particular case would require disqualification in that case if it eventually resulted in a juvenile, criminal or other proceeding involving those family members. In addition, judges should not create the appearance that they are acting with official authority in participating in truancy intervention programs established in local school districts. This includes not only “presiding” over school-sponsored truancy meetings while wearing a judicial robe, but also issuing a “summons” or other notice on behalf of the program to direct families to appear at truancy mediations, hearings or meetings. Nothing in this opinion is intended to suggest that truancy intervention programs do not serve beneficial community interests, nor does it preclude volunteer participation by judges to educate parents and students in group settings about court processes and procedures involved in truancy matters, nor does it preclude a judge from serving in an advisory capacity for such programs generally. Those activities are permissible under Canon 4A and Canon 4B.

References:

Canons 1, 2A, 2B, 3C, 4, 4A, 4B and 4C of the North Carolina Code of Judicial Conduct.