

Wyoming Supreme Court Judicial Ethics Advisory Committee W.S.C.J.E.A.C. Advisory Opinion 2016-01

QUESTION PRESENTED

Can a Circuit Court Judge serve as the President of the Disciplinary Committee for the Episcopal Diocese of Wyoming?

RESPONSE

The Committee answers yes to the question presented.

BACKGROUND

The requesting judge is a member of the Episcopal Church (hereinafter “Church”) and was requested to serve as the President of the Disciplinary Committee for the Episcopal Diocese of Wyoming (hereinafter “Diocese”). The Diocese is the Church’s non-profit business organization within the State of Wyoming. The Diocese has adopted certain bylaws or “canons” that govern its purpose, management, membership and the activities in furtherance of its mission.

To assist in our review, the requesting judge provided the Committee specific information related to the role and function of the Disciplinary Committee.¹ To evaluate and address this advisory request, the Committee believes it is important to understand the function of the Disciplinary Committee and the role of its President; however, our understanding of that role, and this advisory opinion, are limited by the information the Committee has received and reviewed.

I. The Function of the Disciplinary Committee.

The Disciplinary Committee was established by the Diocese to address allegations of misconduct by Diocesan clergy². The Diocese has adopted certain canons of conduct that govern its clergy members’ actions and behavior. When the Diocese receives notice that a clergy member has been accused of violating any of the canons of conduct, other canons establish and define the due process proceedings utilized to address the accusation(s). The Disciplinary Committee serves a central role in the due process proceedings.

¹ The documents provided by the requesting judge include: Canons of the Episcopal Diocese of Wyoming, (October, 2010); Understanding the Title IV Disciplinary System and Procedures by Stephen F. Hutchinson, Esq. (Nov. 2015); and a PowerPoint presentation entitled Training in Title IV for Diocesan Disciplinary System Leaders by Stephen F. Hutchinson, Esq.

² The Diocesan Canons define clergy as “bishops, priests and deacons.” Canon 12, Section 1 of the Canons of the Episcopal Diocese of Wyoming, (October, 2010).

The Disciplinary Committee is composed of both clergy and laity (lay) members of the Diocese. The President of the Disciplinary Committee plays a supervisory role of the committee as a whole. The members of the Disciplinary Committee may serve on three (3) separate subcommittees called the Reference Panel, Conference Panel, and Hearing Panel. Each Panel plays a distinct role in the various stages of the due process proceedings.

A. Role of the Reference Panel

When allegations of clergy misconduct are first reported to the Diocese, it is directed to an intake officer who is responsible for gathering information about the allegations. It is during this “intake stage” that the Reference Panel becomes involved. The President of the Disciplinary Committee serves on the Reference Panel along with the intake officer and other members. The Reference Panel evaluates the allegations and may request additional investigation, if necessary. During the intake stage, the Diocesan Bishop may take interim action against the accused clergy member (hereinafter “the Respondent”), such as removal from the Respondent’s duties. The Reference Panel is responsible for reviewing any interim action to determine whether such action is warranted based on the allegations. During the intake stage, the Bishop and the Respondent can also enter an “Agreement for Discipline” which serves as a resolution and accord of the allegations. In the event of such agreement, the President of the Disciplinary Committee is part of a reviewing body to ensure that such agreement furthers and promotes the values of the Church. If no such agreement is reached with the Respondent, the Reference Panel forwards the matter to the Conference Panel for further action. All Reference Panel proceedings are confidential.

B. Role of the Conference Panel

The role of the Conference Panel is to seek resolution and accord through informal mediation. The president of the Conference Panel (not the President of the Disciplinary Committee) serves as the mediator between the Respondent and the Church’s chosen attorney. The President of the Disciplinary Committee appears to have no role in the mediation process. If no resolution is reached through the mediation process, the Conference Panel notifies the President of the Disciplinary Committee, who then forwards the matter to the Hearing Panel. All Conference Panel proceedings are confidential.

C. Role of the Hearing Panel

When the matter is sent to the Hearing Panel, the Church attorney prepares a report of the allegations, along with the supporting information. The report is presented to the Hearing Panel. The Hearing Panel serves notice of the allegations on the Respondent, who then has thirty (30) days to file a written response. The matter is then set for a hearing before the Hearing Panel. During the time period leading up to the hearing, the parties exchange voluntary disclosures, and may conduct a limited number of depositions, interrogatories and requests for admission. The parties may also file certain pre-hearing motions such as for panel member disqualification or summary judgment.

The hearing before the Hearing Panel is similar to a secular trial. All proceedings are open to the public unless restricted to protect vulnerable witnesses. The President of the Hearing Panel is responsible for regulation of the proceedings. The parties present testimony and evidence in support of their cases, and the Hearing Panel serves a fact-finding and decision-making function similar to a judicial panel. Once all evidence has been received, the Hearing Panel deliberates and reaches a decision to either dismiss the matter or issue an “Order of Discipline.” The Order of Discipline may include admonishment, suspension or removal of the Respondent from the Church. Appeals procedures do exist, but are not relevant for this discussion.

The President of the Disciplinary Committee appears to have no role in the Hearing Panel process.

II. The Role of the President of the Disciplinary Committee.

The role of the President of the Disciplinary Committee appears to be one of supervision and coordination of the due process proceedings. The President has a limited role in the Reference Panel stage, but no role in either the Conference Panel or the Hearing Panel. The President’s lack of involvement in the Conference Panel or Hearing Panel is critical in this Committee’s evaluation of this request.

APPLICABLE RULES OF THE WYOMING CODE OF JUDICIAL CONDUCT

Canon 1, Rule 1.2 of the Wyoming Code of Judicial Conduct provides:

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Canon 3:

Rule 3.1(B) provides that:

A judge shall not participate in activities that will lead to frequent disqualification of the judge.

Rule 3.7(A)(6) provides that:

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by...religious... organizations not conducted for profit, including but not limited to the following activities:

(6) serving as an officer, director, trustee or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

- (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Rule 3.9 provides that:

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

Rule 3.10 provides that:

A judge shall not practice law.

DISCUSSION

This Committee has been asked to evaluate whether the requesting judge's service to his Church, in the manner and role discussed herein, would violate the Code of Judicial Conduct (hereinafter "Code"). The requesting judge's involvement with his Church gives the Committee no cause for concern; however, the specific role and duties for which the requesting judge is asked to serve requires close scrutiny of the Code.

Judges are required to avoid activities that may cause "frequent" disqualification. [Rule 3.1(B) and Rule 3.7(A)(6)(b)]. The Disciplinary Committee is responsible for facilitating the Diocesan institutional due process for the discipline of clergy alleged to have committed misconduct. Because such misconduct may give rise to either criminal or civil claims that could ultimately come before the judiciary, the potential of disqualification exists. The Disciplinary Committee reviews and hears allegations from across Wyoming, not just from within the requesting judge's jurisdiction. While the requesting judge's involvement in the Disciplinary Committee may create an occasional disqualification, it is unlikely that such disqualification would occur frequently. Accordingly, this Committee believes there is no violation of Rule 3.1(B) or Rule 3.7(A)(6)(b).

The Code also prohibits judges from practicing law, serving as a mediator or providing other judicial functions. [Rule 3.9 and Rule 3.10]. As far as the Committee can tell from the information it received, the specific role and duties of the President of the Disciplinary Committee are supervisory and do not violate either Rule 3.9 or 3.10. However, the requesting judge should not serve as a president or a member of the Conference Panel or Hearing Panel, as those roles facilitate either mediation or a judicial function.

CONCLUSION

Overall, we believe that the requesting judge's service as the President of the Disciplinary Committee would not undermine the judiciary's impartiality, integrity, independence, and public confidence. Therefore, we believe such service to be permissive under Rule 1.2 of the Code. We do, however, believe that it is prudent to make the following recommendations:

1. The requesting judge should remove himself from participating in the Disciplinary Committee's activities involving allegations that arise from within the judge's jurisdiction.
2. The requesting judge should ensure that he does not make any statements while serving on the Disciplinary Committee that may violate Rule 2.10 - Judicial Statements on Pending and Impending Cases.

FINALIZED AND EFFECTIVE this 23rd day of February, 2016 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.