

OPINION NO. 46

(Issued: July 1997)
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JUDICIAL PARTICIPATION IN ORGANIZATIONS AND GOVERNMENTAL BOARDS WHICH ADDRESS ISSUES INVOLVING THE ADMINISTRATION OF JUSTICE AND SOCIAL PROBLEMS IN THE COMMUNITY

I. Introduction

The question presented by this Judicial Ethics opinion concerns which organizations, boards or commissions are appropriate for judges to participate in and/or belong to under the California Code of Judicial Ethics. The Judicial Ethics Committee has received a number of inquiries in recent years concerning the propriety of judges belonging to certain organizations and serving on certain governmental boards which are designed to deal with social issues in the community. Examples of issues addressed by such organizations and boards are gang activity, spousal abuse, drug and alcohol abuse, alternative sentencing programs and community service work.

II. Applicable Canons

Canon 2A: “A judge ... shall act at all times in a manner that promotes public confidence in the ... impartiality of the judiciary.”

Canon 2C: “A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin or sexual orientation.”

Canon 4A: Extrajudicial Activities: “A judge shall conduct all of the judge’s extrajudicial activities so that they do not (1) cast reasonable doubt on the judge’s capacity to act impartially.”

Canon 4A(2): “A judge shall conduct all of the judge’s extrajudicial activities so that they do not demean the judicial office.”

Canon 4C(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.”

Canon 4C(3): “Subject to the following limitations ...

“(a) A judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice provided that such position does not constitute a public office within the meaning of the California Constitution, Article VI, section 17.

“(b) A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for profit.

“(c) A judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization

“(i) will be engaged in judicial proceedings that would ordinarily come before the judge, or

“(ii) will be engaged frequently 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.”

Canon 5: Judges “shall ... avoid political activity that may create the appearance of political bias or impropriety.”

Canon 5D: “..., judges shall not engage in any political activity, other than in relation to measures concerning the improvement of the law, the legal system, or the administration of justice.”

Applicable CJA Opinions

Opn. 22: A judge can properly serve as chair of an alcoholism advisory board, appointed by the Board of Supervisors, funded under state law, to advise County officials on prevention and treatment of alcohol abuse problems. The opinion is based on the fact that the activity would relate to the improvement of the law, legal system or the administration of justice. (4/19/75)

Opn. 27: A judge can properly serve as an officer or director of an educational, religious, charitable, fraternal, or civic organization. (6/30/84)

Applicable Sections from Rothman Handbook

§230 - Judges may participate in civic ... activities, with two basic restrictions: “(1) the activity must ‘not reflect adversely upon’ a judge’s impartiality ... and (2) the activity must not ‘interfere with the performance’ of a judge’s judicial duties.”

§230.110 - Judges should “avoid political activity which may give rise to a suspicion of political bias or impropriety. Organizations that advocate social or legislative changes could be regarded as political.”

§230.121 - “A judge should not belong to an organization that is regularly involved in promoting legislation or regularly takes public positions on issues that come before the court.”

§230.122 - Examples of ethics opinions holding activity permissible: board of bar association, alcoholism advisory board, anti-drunk driving advertisement, committee on child abuse, community betterment programs, drug abuse advisory committee, neighborhood watch board.

III. Discussion

It is impossible to draw a bright line between permissible and impermissible participation. However, whenever a group engages in advocacy with respect to substantive legal issues, participation by judges should be scrutinized with great care. If the group engages in such advocacy as to make judicial participation improper, it is not permissible to separate the judge from the advocacy functions of the organization and limit his or her involvement to the non-advocacy functions of the organization since the public will nevertheless perceive the judge as fostering the advocacy functions of the organization.

Factors to be considered in determining whether judicial participation is appropriate include: (1) the extent to which the group engages in political or advocacy activities; (2) the extent to which the group is perceived by the public as engaging in political or advocacy activities; (3) the size and public prominence of the organization; (4) whether the issues which concern the group are likely to come before the court; (5) whether the group is concerned with procedural or substantive changes in the law or in the application of

the law; (6) whether the judge is participating in a policy making position; (7) the fundraising activities of the group.

No single one or combination of these factors is necessarily determinative. The ultimate test for judicial participation in such bodies is whether the judge's association with the group, and the necessarily resulting public perception that the judge supports the goals of the group, is likely to lead to a public perception that the judge's impartiality in administering the law may be questioned.

To the extent that such groups are devoted to the improvement of the law, the legal system or the administration of justice, judicial participation is permitted. In fact, judges are encouraged by the canons to engage in activities which help to improve the administration of justice and the legal system. [Canon 4A, 4B] However, problems arise when the group engages in advocacy towards the adoption, repeal or modification of particular substantive laws or towards the courts' use and application of existing laws in a particular manner. Judicial participation in groups engaging in such advocacy creates a danger that the judge's ability to act impartially may be cast in doubt, thus violating Canon 4A. In addition, the activity of the group may be "political," thus participation may violate Canons 5 and 5D. Furthermore, a judge is precluded from belonging to an organization if it is likely that the organization is involved in frequent litigation and/or judicial proceedings that would ordinarily come before the judge serving on that organization or governmental board. [Canon 4]

In determining whether to join a private organization and/or governmental board, a judge also has an affirmative duty to learn sufficient information about the organization or governmental board so that the judge can determine whether participation would violate the Code of Judicial Ethics.

IV. Application to Specific Factual Situations

1. **Facts:** The Domestic Violence Council is a non-profit corporation with representatives from the courts, D.A., Pub. Def., County Counsel, police, probation, and the bar association. The organization promotes public awareness and education about domestic violence and sponsors an annual conference with the Judicial Council. It does not engage in political activity or promote legislation. May J belong?

Analysis: Yes. [Canon(s) 4B, 4C(3)(a)(b)]

2. **Facts:** J is a member of an organization consisting of community leaders that introduces and endorses legislation making currently legal acts illegal and/or increases penalties for existing criminal acts. The organization is high profile and sponsors many other activities concerning the treatment and prevention of drug addiction. May J continue to be a member?

Analysis: No. A judge may speak about and endorse legislation concerning the law, the legal system, and the administration of justice. However, the legislative activities described here call into question J's impartiality toward persons who come before J charged with violating the supported legislation. [Canon(s) 2A, 4A(1), 4B]

3. **Facts:** May J accept appointment to the board of directors of the National Legal Services Corporation? The local legal services organization appears regularly in J's court.

Analysis: No. A judge should not serve on the board of an organization which frequently engages in proceedings in that judge's court. Here, an affiliate of the organization on which J would sit appears regularly. As a member of the board, J could be involved in policy-making on highly politicized issues, screening cases, selecting and monitoring attorneys and allocating public funds. These activities would not

promote public confidence in the integrity and impartiality of the judiciary. [Canon(s) 2, 4C(3)(c); also see Opinion 31, indicating that judges should not serve on the board of directors of the Legal Aid Society]

4. **Facts:** J has been invited by J's assembly member to serve on a community advisory council. The council meets quarterly to talk about events of state and national interest and to update the legislator about current issues. At the next meeting the topics include budget, state business development, and the expectation of federal assistance to California. Fees are charged to council members for the cost of a newsletter for members, and for meeting expenses. The newsletter highlights information on pending legislation which members would be asked to support or oppose. May J participate?

Analysis: No. Although certain aspects of the council's work might fall within appropriate governmental activity, the overall appearance is one of non-judicial political activity which is prohibited. [Canon(s) 4C, 5, 5A(1)]

5. **Facts:** J is on the Board of Directors of a local women's shelter. The organization has become dissatisfied with the District Attorney's prosecution policies in the area of domestic violence and wants to take an active role in persuading the District Attorney to implement new policies. Should J continue to serve on the Board?

Analysis: No. [Canon(s) 2A, 2B, 4C(3)(c) & Commentary]

6. **Facts:** J is a member of the Commission on Uniform State Laws, a governmental position. May J continue to serve?

Analysis: Yes. Since the Commission is involved in the law and the administration of justice and it does not appear that J's participation would interfere with his judicial duties, this appointment is permissible. [Canon 4]

V. Conclusion

While it is established that bench officers are free to involve themselves in the public life of the communities in which they live and work, it is equally clear that such involvement must be consistent with the principles and examples set forth above in order to safeguard the uniquely evenhanded and unbiased role that the judiciary must play in a free society.

Judges who involve themselves in organizations or governmental boards are required to participate in a manner which maintains the public's confidence in the integrity and impartiality of the judiciary.

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