

California Judges Association  
**OPINION NO. 30**

(Originally issued: July 1983)

**SERVICE IN THE CALIFORNIA NATIONAL GUARD**

**AUTHORITY:** Canons 2C, 4F and 4G

I. Background

The Committee on Judicial Ethics has received an inquiry concerning whether it is permissible for a Judge of the Municipal Court to serve in the California National Guard and if the answer is yes, what law related functions may the judge perform.

II. Questions

1. Is it permissible for a Commissioner or a Judge of the Municipal Court to serve in the California Army National Guard?
2. May a judge be a member of the Judge Advocate General Corps as a counselor regarding legal matters of the National Guard?
3. May a judge be a member of the Judge Advocate General Corps as a hearing officer?
4. Are there distinctions between judge and commissioner for the purpose of this analysis?

III. Answer

The answer to question 1 is yes. The answer to question 2 is no; and the answer to questions 3 and 4 is yes.

IV. Discussion

There are no Canons relative to question 1. Section 17, Article 6, California Constitution, making judges ineligible for any other public office or public employment has been held to apply to only other state offices and does not relate to federal offices. People, ex rel Happel v. Sischo, 23 C2d 478, 492-494. (Former Section 18, Art 6.) The term "officer" in this context has been interpreted not to mean military office or officer and does not refer to office in the state guard. 2 A.G. 21, July 7, 1943. See Martin v. Riley, 20 C2d 28.

Justice Cardozo, quoted in Abbott v. McNutt, 218 Cal 225 (1933), set forth the policy considerations when he stated that Section 18, Article 6 (old designation) was aimed at conserving time of judges for judicial duties and saving judges from entanglements and partisan suspicions which follow other conflicting duties. Further, the section was to exclude judges from extra-judicial activities as may militate against a free, disinterested and impartial exercise of judicial functions. (See Alex v. County of L.A., 35 CA3d 944, 1000.)

As to the second question, Art. 6, Section 17 establishes that a judge may not practice law as does Section 68082 of the Govt. Code, which further specifies that the judge or court commissioner may not act as an attorney in the prosecution of any claim or other proceeding before any department of the state or general government or courts of the United States. Canon 4G also prohibits the practice of law.

As to question 3, there are no canons, constitutional or statutory prohibitions against a judge acting as a hearing officer for the National Guard. Canon 5F states that a judge shall not act as an arbitrator other than in his or her official capacity as a judge. Acting as a hearing officer or on a Court's Martial Board is not the same as being an arbitrator or mediator as contemplated in Canon 5F. To the extent that the National Guard may require an active membership in the State Bar to be eligible to act as a hearing officer, a judge may simply be ineligible due to the status of non-membership in the State Bar. (See Section 6002, Bus. and Prof. Code.)

As to question 4, commissioners are still members of the bar but may be inactive.

This opinion is advisory only. The Committee acts on specific questions submitted, and its opinion is based on facts set forth in the question submitted.

COMMITTEE ON JUDICIAL ETHICS  
July, 1983