

CALIFORNIA JUDGES ASSOCIATION
Judicial Ethics Committee
Opinion No. 61

**MEMBERSHIP ON ADVISORY COMMITTEES TO
GOVERNMENT OR NONPROFIT ENTITIES**

I. Introduction

Judges are frequently asked to serve on advisory committees to government or nonprofit entities. A judge considering service on an advisory committee should be mindful that several canons and other authorities may be implicated in determining whether membership on such a committee is ethically permissible. Different considerations come into play depending on whether the entity is a government entity or a private, nonprofit organization.

II. Issue: Under what circumstances is it ethically permissible for a judge to serve as a member of an advisory committee to either a government or nonprofit entity?

III. Applicable Canons and Authorities

Canon 2B(2)(d): A judge may respond to judicial selection inquiries, provide recommendations (including a general character reference, relating to the evaluation of persons being considered for a judgeship), and otherwise participate in the process of judicial selection.

Canon 4A: A judge shall conduct all of the judge's extrajudicial activities so that they do not

- (1) cast doubt on the judge's capacity to act impartially;
- (2) demean the judicial office; or
- (3) interfere with proper performance of judicial duties.

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 and the other requirements of this Code,

(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 4G: A judge shall not practice law.

Canon 5D: Except as otherwise permitted in this Code, 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.

California Constitution, Article VI, Section 17: A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office, . . .

Rothman, David, *California Judicial Conduct Handbook* (3^d Ed.) §§10.10, 10.31, 10.32, 10.34, 10.35, 10.37 through 10.41, Appendix L.

CJA Ethics Formal Opinion No. 27.

IV. Discussion

Although the term “advisory committee” is used broadly, for purposes of this opinion, the Ethics Committee distinguishes committees or commissions formed to advise or consult with the boards of directors or boards of trustees of those entities from the boards themselves. Membership on the board of directors or trustees of an educational, religious, charitable, fraternal or civic organization is addressed in Formal Opinion No. 27.

A. Advisory Committees to Government or Government-Related Entities

The canons permit a judge to “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.” Canon 4C(3)(a). Accordingly, a judge who contemplates joining an advisory committee to a governmental entity must first ask whether the work of the

entity relates to the improvement of the law, the legal system, or the administration of justice. If it does not, the judge may not ethically be a member of the advisory committee. Even if the work of the committee does relate to the improvement of the law, the legal system, or the administration of justice, the judge must determine whether membership on the committee would constitute public employment or holding public office within the meaning of Article VI, Section 17 of the California Constitution. If it would, the judge may not serve on the committee.¹

These considerations may create important distinctions. For example, a judge may be a member of an advisory committee to a public law school, but may not similarly advise a public school board. The law school's work is related to the law, etc., while the public school's work is not. However, membership on the public law school's advisory committee would be impermissible, even though related to the law, the legal system or the administration of justice, if it amounted to public employment or the holding of public office.

In addition to these two major considerations, the Canons require a judge who is contemplating membership on a governmental advisory committee to determine whether membership would (1) cast reasonable doubt on the judge's capacity to act impartially, (2) demean the judicial office, (3) interfere with the proper performance of judicial duties, or (4) constitute the practice of law.

Examples

Membership permitted. Membership has been permitted on the following government advisory committees, each of which relates to the improvement of the law or the administration of justice, as long as membership would not constitute public employment or holding public office.

1. A judge may serve as a member of the State Department's Advisory Committee on International Law.

2. A judge may serve on the Advisory Committee for the California State Office of the Ombudsman for Foster Care. That committee advises the Ombudsman about a new program established by the legislature which would serve as a neutral and impartial forum for review of concerns about foster care.

3. A judge may serve on an ethics advisory committee of the State Worker's Compensation Appeals Board if membership would not interfere with performance of judicial duties.

4. A judge who formerly served as a deputy attorney general may serve on an advisory committee of law enforcement personnel, court personnel, and

¹ Whether membership on the committee would constitute public employment or public office is a legal question.

prosecutors to advise the Attorney General as to how the Bureau of Identification might better serve the courts.

5. A judge may accept appointment by the President to a national drug abuse commission that will make recommendations to the federal government on combating drug abuse, as long as membership does not interfere with performance of judicial duties.

Judicial Advisory Committees present a special case. Canon 2B(2)(d) expressly permits judges to “participate in the process of judicial selection.” Accordingly,

1. A judge may sit on a Governor’s commission preliminarily reviewing judicial applications on the basis of competence and qualifications.

2. A judge who is a member of California Women Lawyers may attend a meeting between CWL members and representatives of the Governor’s office who are involved in judicial selection for the purpose of encouraging the appointment of more women to judicial office.

3. A judge may serve on a judicial advisory committee to advise the legislature on matters involving judges and the courts.

Membership not permitted.

1. A judge should not serve on an ad hoc committee advising a local school board concerning the best use of new funds available to the district. The committee’s work is not related to improvement of the law, the legal system or the administration of justice.

2. A judge should not accept appointment to the technical advisory commission to the Director of the State Department of Forestry, notwithstanding the judge’s background in this field. The commission’s work is not related to the law, the legal system or the administration of justice.

3. A judge should not sit on an advisory board for a local city to assist in long-term planning for law enforcement matters including personnel, allocation of funding for law enforcement, targeting particular types of crimes, etc. Although the advisory board’s work is arguably related to improvement of the law, the legal system and the administration of justice, membership would cast doubt on the judge’s capacity to act impartially.

B. Advisory Committees to Nonprofit Organizations

Unlike advisory committees to government entities, membership on advisory committees to nongovernmental organizations is not restricted to organizations whose work relates to improvement of the law, the legal system or the administration of justice. For the same reasons that judges may participate

in educational, religious, charitable, fraternal or civic organizations as an officer, director or trustee (see Formal Opinion No. 27), judges may belong to committees that advise such boards. However, judges who wish to serve on advisory committees to nonprofit organizations still must consider whether membership would (1) cast reasonable doubt on the judge's capacity to act impartially, (2) demean the judicial office, (3) interfere with the proper performance of judicial duties, or (4) constitute the practice of law. An important additional factor is that a judge may not sit on an advisory committee if it is likely that the committee or its organization will be engaged in judicial proceedings that would ordinarily come before the judge, or will be engaged frequently in adversarial proceedings in the court on which the judge sits. Finally, a judge may not engage in political activity, other than measures related to the improvement of the law, the legal system or the administration of justice.

Examples

Membership permitted.

1. A judge may serve on a parents' advisory committee of a private school to assist in the selection of a new school principal or a new teacher.
2. A judge may serve as a member of an advisory committee of the Youth Law Academy, an organization dedicated to encouraging high school students to enter the profession of law by providing scholarships and training in legal issues.
3. A judge may serve on an advisory committee of a nonprofit organization to promote opportunities for higher education in the California prisons.
4. A judge may serve on the Ethnic Minority Relations Committee of the State Bar, even during the pendency of an appellate case involving the Committee. The litigation is not pending in the judge's court and membership does not cast doubt on the judge's ability to be impartial.

Membership not permitted.

1. A judge should not serve on a local hospital bio-ethics committee which makes decisions regarding life support and other medical ethics issues, because such matters may result in litigation in the judge's court.
2. A judge may not serve on an advisory committee to a church for the purpose of making recommendations concerning action to be taken regarding accusations of sexual misconduct of clergy. Such recommendations would implicate litigation and might entail the proscribed practice of law.
3. A judge may not serve on an advisory committee to the Children's Assessment Center, a division of Family Court Services. The organization screens children who are alleged child abuse victims and sends them to the Center to be evaluated by doctors and social workers who make findings regarding the alleged abuse. Those findings are presented in court. Such

service would be impermissible as the issues confronting the advisory committee involve the organization frequently in adversary proceedings in court.

4. A judge may not serve on an advisory committee for a congressional candidate, even though the committee would not be engaged in fundraising and would advise the candidate on matters involving improvement of the law, legal system, or the administration of justice. Such would be impermissible political activity because it would appear to be an endorsement of a candidate for nonjudicial office.

5. A judge should not participate in local Bar Association Committee of lawyers and judges to work with the Police Department to coordinate Police Summer Games, the proceeds of which would be used for charitable programs benefitting at-risk children sponsored by the Police Department. Participation would cast reasonable doubt on the judge's ability to act impartially.

V. Conclusion

Many factors must be considered by a judge who is asked to serve on an advisory committee. Membership on an advisory committee to a governmental entity is permitted as long as the work of the committee relates to the improvement of the law, the legal system, or the administration of justice and such service does not constitute public employment or holding public office. In addition, membership must not (1) cast reasonable doubt on the judge's capacity to act impartially, (2) demean the judicial office, (3) interfere with the proper performance of judicial duties, or (4) constitute the practice of law. Generally, a judge may serve on an advisory committee of an educational, religious, charitable, fraternal, or civic organization not conducted for profit as long as the organization is not likely to be involved in frequent litigation and membership does not (1) cast reasonable doubt on the judge's capacity to act impartially, (2) demean the judicial office, (3) interfere with the proper performance of judicial duties, (4) constitute the practice of law, or (5) constitute prohibited political activity.

2007/08 JUDICIAL ETHICS COMMITTEE

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