

**JUDICIAL ETHICS ADVISORY COMMITTEE
OF THE
STATE OF DELAWARE**

The Hon. Donald F. Parsons, Jr., Chair
The Hon. Richard F. Stokes, Vice Chair
The Hon. Robert B. Coonin
The Hon. Mary M. Johnston
The Hon. Bonita N. Lee
The Hon. Michael K. Newell
The Hon. Charles W. Welch, III

March 5, 2010

2010-1

[Redacted]

Re: Request for Judicial Ethics Advisory Committee Opinion

Dear [Redacted]:

You have requested that the Delaware Judicial Ethics Advisory Committee (the “Committee”) provide an opinion concerning whether you may serve as a [redacted]¹ and concurrently work as a part-time employee of the lobbying firm of [redacted]. Alternatively, you have requested guidance as to whether you may work as a lobbyist from January to July and on a *per*

¹10 *Del. C.* § 9211 (“Any retired justice of the peace may be designated by the Chief Magistrate with the approval of the Chief Justice of the Supreme Court, to serve temporarily in any Justice of the Peace Court in the State; provided however, that the retired justice of the peace:...(4) Is not involved or employed in any position which would create a conflict of interest

diem basis for the remainder of the year on a senior judge commission in the [Redacted] Court. You graciously have provided the Committee with a summary of your analysis, particularly addressing any potential conflict of interest with your proposed employer.

Applicable Provisions of the Delaware Judges' Code of Judicial Conduct

Canon 1 (A judge should uphold the integrity, independence and impartiality of the judiciary), Rule 1.2(A) of the Delaware Judges' Code of Judicial Conduct provides:

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

Rule 1.3. provides:

- (A) A judge should not abuse the prestige of the judicial office to advance the personal or economic interests of the judge or others, and should discourage others from doing so.
- (B) A judge should not convey and should discourage others from conveying the impression that they are in a special position to influence the judge.

with the position of justice of the peace...”).

Canon 3 (A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties), Rule 3.1(C) provides:

A judge, subject to the proper performance of judicial duties, may engage in the following law-related activities if in doing so the judge does not cast reasonable doubt on the capacity to decide impartially, independently and with integrity any issue that may come before the judge:

* * *

- (C) A judge may engage in activities to improve the law, the legal system, and the administration of justice.

Rule 3.2 provides:

- (A) A judge may appear at a public hearing before or otherwise consult with an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice to the extent that it would generally be perceived that a judge's knowledge or experience as acquired in the course of the judge's judicial duties provides special expertise in the area.
- (B) A judge acting pro se may also appear before or consult with such officials or bodies in a matter involving the judge or the judge's legal or economic interest or when the judge is acting in a fiduciary capacity.

Rule 3.12 provides:

A judge may receive compensation and reimbursement of expenses for the law-related and extra-judicial activities permitted by this Code or other law, if the source of such payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

- (A) Compensation should not exceed a reasonable amount.
- (B) A judge should not solicit or accept a fee, reimbursement of expenses, or a gift for solemnizing a marriage, except that a judge may accept a non-monetary gift, if the gift is fairly commensurate with the occasion and the judge's relationship with the persons involved.

Canon 4 (A judge should refrain from political activity inappropriate to the judge's judicial office), Rule 4.1(c) (Political and Campaign Activities of Judges and Judicial Candidates) provides:

- (A) A judge should not:
 - (1) act as a leader or hold any office in a political organization;
 - (2) make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public office;
 - (3) directly or indirectly solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings,

or purchase tickets for political party dinners, or other functions.

- (B) A judge should resign the judicial office when the judge becomes a candidate either in a party primary or in a general election for a nonjudicial office.
- (C) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice.

Prior Opinions of the Committee

JEAC 2006-7 (November 28, 2006)

The Committee advised a judge to decline to accept appointment as Chair of the Governor's Consortium on Hispanic Affairs. The Committee found that the Consortium was a governmental committee or commission concerned with issues of fact or policy on matters other than improvement of the law, the legal system or the administration of justice.

JEAC 1998-1 (January 23, 1998)

The Committee considered the propriety of a judge's service on the Continuing Education Advisory Council for a university. The Committee concluded that the judge's participation would not violate the Code of Judicial Conduct. The Committee reasoned in part that the Council did not

appear to be conducted for the economic or political advantage of its members.

JPC 1992-1 (January 9, 1992)

The Judicial Proprieties Committee responded to a request that a member of the judiciary be permitted to serve as a member of the Delaware 2000 Forum. The Committee unanimously concluded that the judge could serve as a member of the Forum. The Committee reasoned that the judge would be participating as a parent and citizen in discourse about the state of the educational system and ways to improve it. The Forum was not assembled to advocate positions or recommend policies to the executive or legislative branches of government. Finally, the Forum as a group was not intended to take public positions on issues or endorse particular policy initiatives.

JPC 1985-1 (April 17, 1985)

Re: Dover Charter Review Committee

JPC 1991-1 (October 7, 1991)

Re: Mental Health Code Revision Committee

JEAC 1999-1 (April 22, 1999)

Re: “Ethics Review Committee” for the Brandywine School District

In each of these three opinions, the Committee at the time advised the judge against participation in the extra-judicial appointment. All three extra-judicial groups either had previously generated controversy and media attention, or were likely to become controversial. Additionally, it was anticipated that the organizations would be making recommendations to executive or legislative bodies for changes in the law or procedures.

ANALYSIS

The Delaware Code defines a “lobbyist” as:

- (5) “Lobbyist” means any individual who acts to promote, advocate, influence or oppose any matter pending before the General Assembly by direct communication with the General Assembly or any matter pending before a state agency by direct communication with that state agency, and who in connection therewith either:
 - a. Has received or is to receive compensation in whole or in part from any person; or
 - b. Is authorized to act as a representative of any person who has as a substantial purpose the influencing of legislative or administrative action; or
 - c. Expends any funds during the calendar year for the type of expenditures listed in § 5835(b) of this title.²

²20 *Del. C.* § 5831(5).

A judicial officer properly may lobby the Delaware General Assembly on behalf of measures to improve the law, the legal system or the administration of justice. A judicial officer may only receive compensation and reimbursement of expenses for extra-judicial activities permitted by the Delaware Judges' Code of Judicial Conduct. Lobbying the General Assembly, on matters other than improvement of the law, the legal system or the administration of justice, is not a permitted extra-judicial activity.³ Thus, a judicial officer may not receive compensation or reimbursement of expenses from clients for engaging in such lobbying activity.⁴

Lobbying is political by nature. The purpose of registering as a lobbyist is to promote the interests of a client by influencing the legislature. A paid lobbyist may be required to participate in political gatherings and fundraisers, which judicial officers may not attend. Representing a client as a lobbyist, for compensation, is incompatible with the ethical constraints accepted by judicial officers.⁵

³Canon 4, Rule 4.1.

⁴Canon 3, Rule 3.12.

⁵See New York Advisory Committee on Judicial Ethics Opinions 98-160 (Jan. 28, 1999); 88-154 (Jan. 12, 1989); 88-80 (July 14, 1988).

Therefore, the Committee must conclude that you should not work part-time with the lobbying firm of [redacted], while serving as a [redacted]. The Delaware Judge's Code of Judicial Conduct does not make any exception for judges who work part-time. Therefore, if you intend to serve as a [Redacted] in the future, you should not accept employment as a part-time lobbyist. The Code of Judicial Conduct does not permit a judicial officer to work as a lobbyist for part of the year, and on a *per diem* basis for the remainder of the year as a [Redacted].

For the Committee:

Mary M. Johnston
Judicial Ethics Advisory Committee

cc: Liaison Justice
Members of the JEAC