

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

The Hon. Joseph R. Slight, III, Chair
The Hon. Mardi F. Pyott, Vice Chair
The Hon. Kenneth S. Clark, Jr., Secretary
The Hon. Mary M. Johnston
The Hon. Sheila G. Blakely
The Hon. Donald F. Parsons, Jr.
The Hon. Richard B. Coonin

September 26, 2007

JEAC 2007-4

[redacted]

**Re: Request for Judicial Ethics Advisory Committee
Opinion**

Dear [redacted],

You have asked the Delaware Judicial Ethics Advisory Committee (the "Committee") to provide an opinion on whether you may serve on the membership committee of the National Council of Juvenile and Family Court Judges ("the NCJFCJ"). The Committee appreciates the information regarding the Council that you attached to your request.

The National Council of Juvenile and Family Court Judges

The NCJFCJ is a non-profit organization as defined by section

501(c)(3) of the Internal Revenue Code and was established in 1937.¹

You described the organization as a “unique national judicial membership organization devoted to improving outcomes for troubled children and families.” The mission of the NCJFCJ is to fulfill its vision of “fair, effective and timely justice”² through:

- Improving the standards, practices, and effectiveness of the nation’s juvenile and family courts;
- Providing training for judges and others who serve in these courts;
- Providing support for judges through continuing education, research, publications, and technical assistance;
- Providing technical support to court systems regarding their structure, management, and procedures;
- Contributing to the development of national policy, standards, and procedures regarding children and families;
- Acknowledging and upholding the rights of victims, the safety of all family members, and the safety of the community;
- Informing the nation as to the work of the juvenile and family courts

The mission statement recognizes, however, that the NCJFCJ’s goals must be accomplished in compliance with the Judicial Code of Ethics of each members’ respective state.³

¹ This information can be found on the NCJFCJ website, *available at* <http://www.ncjfcj.org/content/view/15/75/>.

² This mission is stated on the NCJFCJ website, *available at* <http://www.ncjfcj.org/content/blogcategory/350/415/> .

³ *Id.*

The function of the membership committee, specifically, is to “develop and implement strategies for increasing NCJFCJ membership, as well as to identify the needs and interests of members and how to address those needs and further their interests.”⁴ In your letter, you outlined a number of outreach efforts you may be asked to undertake on behalf of the NCJFCJ. These duties may include writing letters on behalf of the NCJFCJ to Congressional and State representatives seeking a stance on specific legislation that impacts families and children, or testifying before a congressional or legislative committee regarding such issues. As a member of the membership committee, you would also be asking other Juvenile and Family Court Judges or personnel to join and support the NCJFCJ. Finally, you may be asked to seek support from members of Congress in the form of legislation that would provide government funding to the NCJFCJ.

The information you provided also indicates the nature and type of the services funded by the NCJFCJ. These services consist of training programs, research projects and various publications. As you stated in your letter, the

⁴ National Council of Juvenile and Family Court Judges Committee Assignments (2006-2007), *available at* <http://www.ncjfcj.org/content/blogcategory/373/446/.22455>

goal of these services is to improve practices and assist judges in making well informed decisions that will benefit the children and families that appear before them. In 2006, the NCJFCJ sponsored 33 service requests in Delaware on various topics, including family violence, juvenile delinquency, juvenile arrest statistics, child abuse and neglect, and Juvenile Delinquency Guidelines. As of December 31, 2006, Delaware had 9 Judicial and Associate members of the NCJFCJ.

Applicable Canons of the Delaware Judges' Code of Judicial Conduct

Your inquiry implicates Canons 4 and 5 of the Delaware Judges' Code of Judicial Conduct ("the Code"), which state:

Canon 4. A judge may engage in activities to improve the law, the legal system, and the administration of justice.

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 any issue that may come before the judge.

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice (including projects directed to the drafting of legislation).

B. 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 experience provides special expertise in the area. . . .

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in planning fund-raising activities and may participate in the management and investment of funds, but, except as provided herein, should not personally participate in fund-raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice. A judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority. A judge shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

Canon 5. A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties.

* * *

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. . . .

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

* * *

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an

organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

Issues

The Committee has considered the following issues in connection with your request: (1) whether participation with the membership committee of the NCJFCJ is a law-related or quasi-judicial activity governed by Canon 4, or an extra-judicial activity governed by Canon 5; and (2) whether participation with the membership committee would be akin to becoming personally involved in fund-raising activities, would be perceived as coercive, or is essentially a fund-raising mechanism as prohibited by Canon 4(C).

Analysis

A. NCJFCJ Is A Law-Related Activity

The Committee has determined that your participation on the membership committee of the NCJFCJ would be considered a law related activity that is concerned with the administration of justice within the purview of Canon 4. Judicial involvement in law related activities is encouraged, as reflected in a 1991 opinion of the U.S. Committee on Codes of Conduct which stated:

As a judicial officer and person specially learned in the law, a

judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that the judge's time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.⁵

As its mission statement explains, the NCJFCJ was created to provide services for Juvenile and Family Court Judges and personnel. Since 1990, guidelines and resources published by the Council have been cited by Delaware courts on five separate occasions. In each instance, the materials published by the NCJFCJ were regarded as authoritative sources on court practices with regard to abuse and neglect cases,⁶ custody issues,⁷ and child placement.⁸ The fact that our courts have relied upon NCJFCJ guidance in substantive legal opinions provides further support for the Committee's conclusion that the NCJFCJ is engaged in law-related activity.

In addition, the membership of the NCJFCJ consists predominantly of

⁵ U.S. Committee on Codes of Conduct, Advisory Op. No. 85.

⁶ *Brown v. Division of Family Services*, 803 A.2d 984, 953 n.8 (Del. 2002); *In re Walker*, 923 A.2d 824, 827 n.11, 828 n.13 (Del. Fam. Ct. 2006); *Division of Family Services v. Miller*, 922 A.2d 1185, 1189 n.8 (Del. Fam. Ct. 2005).

⁷ *Christina L. v. Harry J.L., Jr.*, 1995 WL 788196, at *21 n.7 (Del. Fam. Ct. June 5, 1995).

⁸ *Tilden v. Hayward*, 1990 WL 131162 (Del. Ch. Sept. 10, 1990).

judges. The President and remaining members of the Board of Trustees of the NCJFCJ all are judges.⁹ Each committee and work-group is chaired by a judge and the majority of committee and work-group members are judges.¹⁰ In light of these facts regarding the NCJFCJ, the Committee is satisfied that your participation on the membership committee would constitute a law-related activity that is governed by Canon 4.¹¹

The Committee's conclusion that participation with the NCJFCJ is a law-related activity, and not an extra-judicial activity, is critical to the analysis and ultimately distinguishes this proposed endeavor from other cases recently addressed by the Committee. For instance, last November the Committee was asked to determine whether a Judge should accept appointment as Chair of the Governor's Consortium on Hispanic Affairs.¹² The Consortium was deemed a governmental committee or commission within the meaning of Canon 5.¹³ Although the Judge's ability to remain impartial was not questioned, the Committee advised against accepting the appointment

⁹ This information is available online at <http://www.ncjfcj.org/content/view/104/219/>.

¹⁰ This information is available at <http://www.ncjfcj.org/content/blogcategory/373/446/>.

¹¹ At the very least, a position on the membership committee would be deemed an extra-judicial activity, which would still be governed by Canon 4.

¹² Delaware Judicial Ethics Advisory Committee Opinion 2006-7.

because the Consortium was “concerned with issues of fact or policy on matters other than improvement of the law, the legal system or the administration of justice, and undoubtedly would involve more than historical, educational, and cultural activities.”¹⁴

There would be additional concerns if the NCJFCJ was a Civic or Charitable Activity governed by Canon 5(B). In that situation, you would be prohibited from service with the organization to the extent that it might “be engaged in proceedings that would ordinarily come before the judge or [would] be regularly engaged in adversary proceedings in any court.”¹⁵ The Family Court of Delaware has relied upon publications of the NCJFCJ in reaching decisions on substantive legal issues.¹⁶ Relying on material written or published by the NCJFCJ, however, is significantly different from the NCJFCJ being involved in proceedings that would come before your court either as a party or otherwise. In the former situation, the material the NCJFCJ publishes serves as a neutral research tool that facilitates the

¹³ DEL. JUDGES’ CODE OF JUDICIAL CONDUCT CANON 5(G).

¹⁴ *See supra* n.12 (Advisory Op. 2006-7).

¹⁵ DEL. JUDGES’ CODE OF JUDICIAL CONDUCT CANON 5(B)(1).

¹⁶ *See e.g. In re Walker*, 923 A.2d 824, 827 n.11, 828 n.13 (Del. Fam. Ct. 2006); *Division of Family Services v. Miller*, 922 A.2d 1185, 1189 n.8 (Del. Fam. Ct. 2005); *Christina L. v. Harry J.L., Jr.*, 1995 WL 788196, at *21 n.7 (Del. Fam. Ct. June 5, 1995).

decision-making process, whereas in the latter circumstance, a judge must make decisions that may be directly adverse to the interests of the NCJFCJ. Based on the Committee's understanding of the NCJFCJ's mission and function, it would not appear as a party or witness (through its representatives) in litigation that would ordinarily come before the Family Court.

B. The Membership Committee

Moving forward with the analysis, the Committee has concluded that the duties you anticipate carrying out on behalf of the NCJFCJ would be permitted by Canon 4. According to sections A and B of Canon 4, a judge may participate in projects involving drafting legislation and may testify at public hearings before executive and legislative bodies.¹⁷ A judge may also make recommendations to public and private fund-granting agencies regarding projects and programs that concern the law.¹⁸ Further, solicitation from other judges is tolerated, as long as the soliciting judge does not have supervisory or appellate authority over the solicited judge.¹⁹

Although participation on the NCJFCJ is a law-related activity, Canon 4

¹⁷ DEL. JUDGES' CODE OF JUDICIAL CONDUCT CANON 4(A) and (B).

¹⁸ DEL. JUDGES' CODE OF JUDICIAL CONDUCT CANON 4(C).

¹⁹ *Id.*

sets forth certain restrictions that may affect your service on the membership committee. An informal opinion issued by the American Bar Association stated that a judge must “avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute ... to charitable enterprises.”²⁰ While a judge may aid an organization in planning fund-raising activities, that judge is prohibited from personally participating in fund-raising, even in connection with law-related activities.²¹ With respect to membership solicitation, a judge may look to other judges over whom he does not exercise supervisory or appellate authority for participation in a law-related organization.²² Membership solicitation is, however, prohibited if the solicitation is directed to subordinate judges or “might reasonably be perceived as coercive or is essentially a fund-raising mechanism.”²³ Your duties with the membership committee should be tailored to these restrictions to avoid the perception of inappropriate conduct.

Conclusion

²⁰ ABA Informal Op. 603

²¹ DEL. JUDGES’ CODE OF JUDICIAL CONDUCT CANON 4(C).

²² *Id.*

²³ *Id.*

In conclusion, it is the Committee's opinion that your participation with the membership committee of the NCJFCJ, with the restrictions discussed above, would not violate Canon 4 or any other provision of the Delaware Judges' Code of Judicial Conduct.

For the Committee:

Joseph R. Slights, III
Judicial Ethics Advisory Committee

cc: Liaison Justice
Members of Judicial Ethics Advisory Committee