

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

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

March 21, 2006

JEAC 2006-3

Superior Court of Delaware
Kent County Courthouse
38 The Green
Dover, DE 19901

Re: Opinion of the Judicial Ethics Advisory Committee:
May a Judge Serve in an Editorial Advisory Capacity for
the State Defense Force Publication Center, a Non-Profit
Organization?

Dear Judge _____ :

Thank you for your request of January 17, 2006 seeking an advisory opinion from the Judicial Ethics Advisory Committee (“Committee”) on the propriety, under the Delaware Judges’ Code of Judicial Conduct, of a judge serving as a Special Editorial Advisor for the State Defense Force Publication Center (“SDFPC”).

Based on information you kindly provided as well as information generally available to the public, we understand that a State Defense Force (“SDF”) is an organized, all-volunteer military organization, which serves primarily within its own respective state and communities. The SDF is not part of the National Guard or the federal military force, although it may work in association with or in support of them. The SDF supports local communities or governments near where SDF units are based in emergency management,

community support, and support to local events or organizations such as hospitals or sheriff's departments. SDFs also represent a significant potential at the state level for providing trained personnel or forces who can, as a potential force multiplier, easily integrate with active and reserve component military forces in times of crisis because they share a common culture, rank structure, organization and regulatory procedures. Further, SDFs play a large role in enhancing the state's ability to plan, coordinate and rehearse for catastrophic events in order to bring effective organization and capability should a catastrophic event occur, such as a terrorist or subversive attack.

The purpose of the SDFPC is to permit publication of material of interest and concern to the SDF, State Guard community and other interested organizations and individuals. The contents of the SDFPC's publications focus on the use of SDF units in the above described roles.

The SDFPC currently has two publications: the State Defense Force Journal ("SDFJ") and the State Defense Force Monograph Series ("SDFMS").¹ The SDFJ contains shorter articles of one to ten pages in length addressing a wide range of topics of interest to one or more sectors of the SDF community. The SDFMS includes longer publications, often containing scholarly, thought-provoking articles of approximately ten to thirty pages in length and dealing with one broad topic.

¹ SDFPC, <http://www.sdfpc.org/sdfpc3.htm> (last visited Mar. 13, 2006).

We understand your role in the SDFPC, [redacted], will be to examine articles pertaining to SDFs that touch on military, State and Federal law. In that capacity, you expect to comment on whether the articles received are suitable for publication.

I. APPLICABLE CANONS OF JUDICIAL CONDUCT

Your request implicates several canons of the Delaware Judges' Code of Judicial Conduct. They are:

Canon 2. A judge should avoid impropriety and the appearance of impropriety in all activities.

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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

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).

* * *

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 fundraising 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.

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. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(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.

Canon 7. A judge should refrain from political activity inappropriate to the judge's judicial office.

II. THE COMMITTEE'S ADVICE

We believe that your proposed service as a Special Editorial Advisor for the SDFPC, subject to certain cautions, would not violate the Delaware Judge's Code of Judicial Conduct.²

² See JEAC Opinion No. 90/5 (Fla. Mar. 20, 1990) (allowing judge to serve as Chairman of the Editorial Board of a legal publication).

Canon 4 allows a judge to engage in activities to improve the law, the legal system, and the administration of justice. Based on your request, we understand that your position at the SDFPC will focus on recommending scholarly articles for publication. In particular, you will examine articles to the extent they may touch on military law and State and Federal law pertaining to SDFs. Therefore, we believe that your service fits within the prescriptions of Canon 4, which allows a judge to “engage in activities to improve the law, the legal system, and the administration of justice.” Further, there is no reason to believe from your description of your anticipated work for the SDFPC that it would distract from or impede the administration of justice.

Therefore, you may serve as a Special Editorial Advisor so long as that position does not cast doubt on your capacity to decide independently and impartially any issue that may come before you.³ Because the SDFPC’s publications involve issues of military law, we agree with your assessment that it would be highly unlikely that one of the issues discussed in the publications would ever come before you as a Delaware trial judge. Consequently, we do not believe that serving as a Special Editorial Advisor for the SDFPC would cast doubt on your ability to independently and impartially decide any issue that would come before you. Of course, you should recuse yourself if an SDF or the SDFPC is ever a party in your court.

We understand from the information you provided to us as well as our own independent research that the SDFPC is not a political organization as described in Canon 7.

³ See Canon 5(B).

Moreover, we understand that its publications will not advocate or recommend political positions or policies but rather will involve non-partisan scholarly articles.

Nevertheless, the Committee observes from its own experience that matters associated with military issues, especially homeland security, can be controversial.⁴ Thus, you should regularly re-evaluate the propriety of your service on the SDFPC should the organization change from a neutral organization to one actively pursuing a political agenda.⁵

III. CONCLUSION

We conclude that the Delaware Judge's Code of Judicial Conduct does not prohibit your service as a Special Editorial Advisor for the State Defense Force Publication Center. Thus, while your service on the SDFPC may implicate Canons 2, 4, 5, and 7, we believe based on your description of your role at the SDFPC that it would not violate those canons.

Consistent with the conditions set out in Canon 5(B), however, we caution that you may not solicit funds for the organization and, although your name may be listed as an officer of or advisor to the SDFPC, you may not use or permit the use of the prestige of your office for fundraising. You also should avoid soliciting new members if that might reasonably be perceived as coercive or if a membership drive is essentially a fund-raising mechanism.

⁴ See, e.g., JEAC 1992-1 (Jan. 9, 1992) (approving a judge's service on the Delaware 2000 Forum, subject to a caution regarding potentially controversial issues relating to public education); JEAC 1985-1 (Apr. 17, 1985) (discouraging a judge from serving on the Dover Charter Review Committee).

⁵ Cf. JEAC 1994-2 (Sept. 29, 1994) (A judge may not become a member or officer of an organization whose primary purpose is to benefit Marines and veterans, including promoting legislation for those purposes.).

The Honorable [redacted]

March 21, 2006

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For the Committee:

Donald F. Parsons, Jr.
Judicial Ethics Advisory Committee

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cc: The Honorable Randy J. Holland, Liason Justice
Members of the Judicial Ethics Advisory Committee:
The Honorable Joseph R. Slights, III, Chair
The Honorable Mardi F. Pyott, Vice Chair
The Honorable Kenneth S. Clark, Jr., Secretary
The Honorable Sheila G. Blakely
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