

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

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The Hon. Sheila G. Blakely
The Hon. Donald F. Parsons, Jr.
The Hon. Robert B. Coonin

February 22, 2006

JEAC 2006-2

New Castle County Courthouse
500 North King Street, Suite 9450
Wilmington, DE 19801-3736

**Re: Opinion of the Judicial Ethics Advisory Committee: May a
Judge Serve on the Board of Directors of the Police Athletic
League of Delaware?**

Dear Judge :

Thank you for your request of January 3, 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 member of the Board of Directors of the Police Athletic League of Delaware, Inc. (“PAL of Delaware”).

Based on information you kindly provided as well as information generally available to the public, we understand that PAL of Delaware is a local chapter of the National Association of Police Athletic/Activities Leagues, Inc. (“the National Association”), whose mission statement is to prevent juvenile crime and violence by providing civic, athletic, recreational, and educational opportunities and resources to PAL

chapters.¹ The philosophy that drives PAL's juvenile crime prevention efforts is that when their first encounter with a police officer is "in a positive environment," such as on the "friendly field of sports competition," youth will develop "a strong, positive attitude towards police officers that will help them significantly in becoming good citizens on their journey to adulthood."² As a result, chapter membership in the National Association is exclusively limited to youth programs operated by law enforcement agencies.³

Consistent with this requirement, it appears that PAL of Delaware is sponsored by the New Castle County Police Department ("NCCPD").⁴ In fact, three New Castle County police officers founded PAL of Delaware in 1984.⁵ One of those officers has since retired from the NCCPD and serves on the present Board of Directors of PAL of Delaware along with another retired NCCPD officer and an active New Castle County police sergeant.⁶

The Committee's Advice

We acknowledge that, by seeking to prevent juvenile crime, PAL of Delaware provides a valuable service to the community and commend your willingness to volunteer your considerable talent toward that goal. Nevertheless, because we believe that the general public identifies PAL of Delaware with law enforcement, we conclude your proposed service as a member of its Board of Directors will breach your duty under

¹ <http://www.nationalpal.org/> (February 1, 2006).

² <http://www.palde.org/> (January 27, 2006).

³ See Article III, sec. 3.1 A, BYLAWS, NATIONAL ASSOCIATION OF POLICE ATHLETIC LEAGUES, INC. (AUG. 5, 2003) available at http://www.nationalpal.org/Member_Services/By-Laws2003-04.pdf.

⁴ <http://www.palde.org/> (January 27, 2006) ("Through collaboration with the New Castle County Police Department the effectiveness of these programs is intensified").

⁵ *Id.*

⁶ The retired officer-directors are Tom Gordon and David McAllister. The executive director of PAL of Delaware, Michael Kelly, is the active police officer on the Board.

Canon 2 of the Delaware Judge's Code of Judicial Conduct to avoid the appearance of impropriety in all activities.

Applicable Canons of Judicial Conduct

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

Canon 1. A judge should uphold the integrity and independence of the judiciary.

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

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 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.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.⁷

Prior Opinions of the Committee

Numerous prior opinions of the Committee have examined the propriety of extrajudicial activities. In JEAC Opinion 1998-4, we recommended that a judge not “ride along” in a police vehicle driven by the judge’s son while on duty as a Rehoboth police officer despite that the judge’s duties made it unlikely anyone arrested by the son would ever appear before the judge. Applying Canon 2, we reasoned that “an activity which may in itself be innocuous can, nevertheless, create an impression in the public eye which compromises the . . . activity.”⁸ As a result, “[a]n independent and impartial judiciary must be vigilant constantly not to convey to the public that the line of demarcation between the judiciary and the law enforcement agencies is eroded.”⁹ Consistent with this constant vigilance, “[a]n independent and impartial judiciary is best kept separate from the enforcement arms of government.”¹⁰

Several opinions discussed a judge’s participation in civic or charitable organizations. We deemed it inappropriate that a judge perform volunteer work for Avalon, a private, non-profit facility whose reports the judge regularly considered during

⁷ Because we have concluded that a judge’s service on the PAL of Delaware Board of Directors would contravene Canon 2, our opinion will not discuss how Canon 5 may impact such proposed service.

⁸ JEAC Opinion 1998-4 at 1 (Aug. 31, 1998).

⁹ *Id.* at 2.

¹⁰ *Id.* at 1.

sentencing deliberations and to which the judge made referrals.¹¹ Participating in the activities of an organization to which the judge made referrals would reflect adversely on the judge's impartiality.

On the other hand, we felt that a judge could serve consistently with the Delaware Judge's Code of Judicial Conduct on the Board of Directors of the Delaware Military Academy, Inc., a non-profit charter school.¹² We accepted that the school was not run for the political or economic advantage of its members, that it was not likely the school would regularly engage in adversarial proceedings in the courts, and that the judge would not engage in fund raising on behalf of the school. Instrumental to our conclusion was that the judge would not use or permit the school to use the prestige of the judge's office to solicit funds.

In a June 8, 2000 opinion, we concluded that a judge could serve on the Board of Directors of the First State Community Action Agency. The agency was a non-profit, private Delaware corporation, that served as the administrative agent for funds used to fight poverty through such specific projects as Head Start, employment and training initiatives, a housing counseling program, water and waste water development programs, and emergency home repair alternative sentencing programs.¹³ We understood that the board of this agency was an oversight governing body and did not become substantively involved in the operation of the programs. The perspective from which we approached this request was that judges ought to be "encouraged to participate in community activities for primarily two reasons: (1) community involvement will deter [judicial] isolation and shortsightedness; and (2) judges are in a special position to contribute to

¹¹ JEAC Opinion 2002-1 (Jan. 11, 2002).

¹² JEAC Opinion 2001-2 (Oct. 19, 2001).

¹³ JEAC Opinion 2000-3 (June 8, 2000).

their community because of the intellectual ability they bring when considering the issues.”¹⁴ For a judge not to share this ability is inconsistent with a judge’s role.

Service on the Board of Directors of the Police Athletic League of Delaware

From these opinions, it is obvious our deliberations must assess the impact of two potentially conflicting perspectives. On the one hand, as long as PAL of Delaware is not pursuing the economic or political advantage of its members and is not likely to engage in proceedings that ordinarily come before the judge or to be engaged in adversary proceedings in any court and as long as the judge does not solicit funds or give investment advice to PAL of Delaware, a judge’s service on the Board is the type of commendable community involvement this Committee has sanctioned. On the other hand, the fact that PAL of Delaware is a program sponsored by the NCCPD tends to erode the line of demarcation in the public’s mind between the judiciary and law enforcement agencies. For the reasons that follow, we resolve this conflict against serving on the PAL of Delaware Board.

We believe that PAL of Delaware is closely identified with the police in the public perception. This perception is grounded in fact. The NCCPD sponsors PAL of Delaware, which, in fact, was founded by three New Castle County police officers.¹⁵ Without such sponsorship, or the sponsorship of some law enforcement agency, PAL of Delaware would not be a PAL organization. Most importantly, the philosophy underlying the PAL program itself requires that police officers interact with children in a relaxed, friendly setting. Thus, the very nature of the institution requires police participation. As a result, PAL of Delaware cannot divorce itself from an abiding police

¹⁴ *Id.* at 3 – 4 *citing* JUDICIAL CONDUCT REPORTER 15 N. 1 JCR 1 (1993).

¹⁵ <http://www.palde.org/> (January 27, 2006).

nexus, neither in its origins, its guiding philosophy, nor its programs. The public perception this nexus fosters is that PAL of Delaware is a police agency.

Given this public perception, a judge's service on the PAL of Delaware Board prompts concerns over the erosion of judicial independence and impartiality. The admonishment in Canon 2 that a judge avoid even the appearance of impropriety seeks to insure that persons appearing before a judge can count on the judge's independence and impartiality. In fact, relying on Canon 2, we have said that judges should keep "separate from the enforcement arms of government" to preserve public confidence in judicial impartiality.¹⁶ While we have no doubt you would insure that service on the Board of PAL of Delaware would not influence your judicial duties, a criminal defendant who appears before you and knows of your service on that Board may well believe, understandably given the public's "police oriented" perception of PAL of Delaware, that you are police oriented. The potential for this belief, and the resulting doubts whether the defendant was treated fairly, compromise judicial impartiality.¹⁷

We underscore that our conclusion is narrowly circumscribed by the nature of PAL of Delaware and its public perception. For example, unlike PAL of Delaware, the necessity of police sponsorship and the public's perception of police affiliation played no part in the operation of the Delaware Military Academy, Inc., or the First State Community Action Agency. As a result, such concerns did not factor into our opinions sanctioning judicial service on the boards of those entities.¹⁸ Moreover, although we

¹⁶ JEAC Opinion 1998-4 at 1 (Aug. 31, 1998).

¹⁷ *Accord* OPINION 94-85, NEW YORK ADVISORY COMMITTEE ON JUDICIAL ETHICS (Sept. 22, 1994) (membership in an association identified with the police incompatible with judicial office); OPINION 92-112, NEW YORK ADVISORY COMMITTEE ON JUDICIAL ETHICS (Sept. 24, 1992) ("As matters in which police are involved may come before the judge, membership in a police chief's association may reflect adversely on the judge's impartiality").

¹⁸ JEAC Opinion 2001-2 (Oct. 19, 2001) & JEAC Opinion 2000-3 (June 8, 2000).

understand that service on the Board of PAL of Delaware would not necessarily bring you into regular association with many active police officers and would be removed from direct involvement in the programs in which police actively participate, this distinction, in all likelihood, is lost on the public. Finally, unlike an organization such as the YMCA whose Christian origins are largely vestigial, PAL of Delaware continues to require active police sponsorship and participation.

Conclusion

We conclude that the Delaware Judge's Code of Judicial Conduct prohibits your service on the Board of Directors of the Police Athletic League of Delaware, Inc. Because the public perception, fueled by the organization's origins, philosophy, and operation, links PAL of Delaware to law enforcement, a judge's service on its Board violates the directive in Canon 2 that a judge act to promote public confidence in the independence and impartiality of the judiciary.

For the Committee:

Sheila G. Blakely
Deputy Chief Magistrate
Justice of the Peace Court

cc: Liaison Justice
Members of the Judicial Ethics Advisory Committee