

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

The Hon. Joseph R. Slights, III, Chair  
The Hon. Mardi F. Pyott, Vice Chair  
The Hon. Kenneth S. Clark, Jr., Secretary  
The Hon. James T. Vaughn, Jr.  
The Hon. Sheila G. Blakely  
The Hon. Donald F. Parsons, Jr.  
The Hon. Robert B. Coonin

**2005-3**

December 7, 2005

**Re: Opinion From the Judicial Ethics Advisory Committee:  
May a Judge Attend an Event to Honor a Retired Public  
Servant?  
May a Judge Participate in the Event Program as a  
Speaker?**

Dear \_\_\_\_\_ :

You have requested an opinion of the Judicial Ethics Advisory Committee (“the JEAC or the Committee”) regarding whether members of the judiciary would be precluded by the Delaware Judges’ Code of Judicial Conduct (“the Code”) from attending an event to be held on January 27, 2006, in honor of former Attorney General \_\_\_\_\_ (hereinafter “the event”). The planners of the event have also asked you to speak during the program and you seek guidance as to whether this would be appropriate under the Code.

According to his letter dated October 24, 2005, a member of the steering committee for this event, states that the event will be organized by the Delaware Republican Party. Mr. goes on to state that the event “is not intended as a political event or a political gathering, but as a night to honor Mr. .” According to Mr. , “[t]he event is designed to be bipartisan and totally focused on Mr. .” Indeed, according to Mr. , many Democrats serve on the steering committee for the event and it is anticipated that many Democrats will attend the event.

Mr. has advised you that several judges will be invited to the event. He further advises that the cost to attend the event for judges will include the cost of the meal plus a contribution to a reputable charitable organization dedicated to relief for victims of hurricane Katrina. During a recent telephone discussion with Mr. , he advised me that the cost of the event tickets for others (non judges) attending the event will include the cost of the meal, a contribution to the hurricane relief effort and a contribution to the Delaware Republican Party. This has now been confirmed by email from Mr. dated December 5, 2005.

### **The Committee’s Advice**

The Committee believes that the political contributions that are being

solicited in connection with this event make the event “a political gathering.” Consequently, the Committee believes that, in accordance with the applicable Canons of the Code, judges “should not attend” the event. Needless to say, the Committee also believes that you should decline to speak at the event.

### **The Applicable Canons of Judicial Conduct**

Your request implicates Canon 7 of the Code which states, in pertinent part:

#### **A. A judge should not:**

- (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. (emphasis supplied).

Your request may also implicate Canon 2B of the Code which provides, in pertinent part:

B. A judge should not lend the prestige of the judicial office to advance the private interests of others....

### **Analysis**

#### **A. Attendance at the Event**

After considering the information we have received regarding the funds to

be raised in connection with the event, the Committee has concluded that Delaware judges should not attend. Although the event has been billed as a non-political event, the fact that a portion of the proceeds from the event will go to the Delaware Republican Party renders the event a political fund-raising event. Pursuant to Canon 7 of the Code, “a judge should not ... attend political gatherings, or purchase tickets for political party dinners.” The Committee has concluded that this provision is directly implicated by the event as it has been described to us by its organizers.

A recent article on this subject offers meaningful guidance:

Whether a judge may attend a testimonial for a [former] political officeholder depends on the circumstances. Permission for a judge to attend a testimonial honoring a politician is more likely to be granted:

If the event is a bona fide testimonial, with **no fund-raising** or campaigning; ...

If the testimonial is sponsored by a community group or group of friends, not a political organization....<sup>1</sup>

The event not only will be sponsored by the Delaware Republican Party, it also will be used as a vehicle to raise funds for the Delaware Republican Party. Given the nature of the event, particularly that its primary purpose is to honor a

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<sup>1</sup>Cynthia Gray, *A Judge's Attendance at Social Events, Bar Association Functions, Civic and Charitable Functions, and Political Gatherings*, American Judicature Society, State Justice Institute (1996).

retired public servant at a bipartisan gathering, the Committee likely would opine that Republican Party sponsorship of the event, alone, would not render the event a prohibited “political gathering” under Canon 7. Republican Party sponsorship coupled with Republican Party fund-raising, however, makes this event a “political gathering” notwithstanding the proffered intentions of the organizers.

Although no Delaware JEAC opinion directly addresses the question of whether a judge may attend an event to honor a retired public servant, the JEAC has previously opined in dicta that judges may not attend “political gatherings.”<sup>2</sup> Opinions from judicial ethics advisory committees in other jurisdictions have more directly addressed the question raised in your letter under analogous circumstances, and the vast majority of these opinions interpret Canon 7 to prohibit attendance at “testimonial dinners” where proceeds from the dinner would be used to raise funds for a political candidate or a political party.<sup>3</sup>

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<sup>2</sup>See JEAC Op. 2002-3.

<sup>3</sup>See *New Jersey Jud. Eth. Advisory Com. Informal Op.* 16-91 (1991); *Rhode Island Adv. Op.* 89-9 (1989); *South Carolina Adv. Op.* 6-1996 (1996). Cf, *Florida Comm. On Standards of Conduct Governing Judges Op.* 77-20 (1978)(judge may attend testimonial dinner for incumbent county commissioner if primary objective of the dinner is to honor distinguished public servant rather than to raise funds for reelection); *Massachusetts Comm. On Jud. Eth. Op.* 01-15 (2001)(reception and dinner to honor mayor who has chosen not to seek reelection is not a political event where funds collected for the event are not intended to cover costs of political activity in which the mayor has engaged, is now engaging, or intends to engage in the future).

## **B. Speaking at the Event**

The Committee also concludes that you should not speak at the event, even if attendance at the event was permitted under the Code. Specifically, we are concerned that your speaking at the event would implicate two Canons of the Code. First, Canon 7 specifically prohibits a judge from making speeches “for a political organization.” While it is true that the event is intended to honor a retired public servant and, in that sense, is non-political, the fact that a portion of the proceeds from tickets purchased by non-judges will go to the Delaware Republican Party makes any speech that you might give at the event ultimately “for a political organization.” By giving the speech, you would be contributing your efforts to a program that provides a direct benefit to the Republican Party. We are also concerned that if you were to be listed on the program as a speaker, or on any solicitation materials for the event, such circumstances would violate Canon 2B which prohibits a judge from “lend[ing] the prestige of the judicial office to advance the private interests of others.” We would, therefore, recommend against any judge speaking at the event or, for that matter, being listed on any program or solicitation materials for the event should that judge choose to disregard the Committee’s advice that judges should not attend the event in the first place.

For the Committee:

Joseph R. Slights, III  
Chair, Judicial Ethics Advisory Committee

cc: Liaison Justice  
Members of the JEAC