

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

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THE HON. WILLIAM J. WALLS, JR.

**May 15, 2001
2001-1**

JEAC

The Honorable

**Re: Your April 24, 2001 Request For Opinion from the
Judicial Ethics Advisory Committee**

Dear Judge :

You have requested an advisory opinion from the Judicial Ethics Advisory Committee on whether you may serve as a volunteer judge in a newly-formed Teen Court program in Sussex County.

The Teen Court program is a nationally recognized diversion program for juvenile offenders. As the Committee understands the operations of the Teen Court program, Teen Court allows juveniles who have been charged with minor offenses to have their charges disposed of from outside the criminal process. The format for this is that the Department of Justice, with agreement of the juvenile, enters a nolle prosequi on the charge and the case is referred to Teen Court. In Teen Court, juveniles act as prosecutors, defense attorneys, and jurors. The cases are presented by the prosecutor and defense attorney, and the jury, not the judge, decides the appropriate punishment. The jury's decision relates

only to punishment and neither guilt nor innocence is decided. The program is held in a courtroom setting and a judge presides over the proceedings. The involvement of the judge extends to that of advisor and not as a participant in the decision-making process.

The appropriateness of your involvement as judge would be governed by Canons 4 and 5 of the Delaware Judges' Code of Judicial Conduct. Your initial concern was whether your participation would be considered an act of arbitration and thus, contrary to Canon 5(E), which prohibits a judge from acting as an arbitrator or mediator or otherwise performing judicial functions. However, your participation as a Teen Court judge would not fall within the definition of an arbitrator or mediator as the Committee historically understands those words to mean.¹ Your involvement is apparently nothing more than that of an advisor/overseer to ensure that the proceedings are handled in an orderly fashion. You do not decide guilt, innocence, or punishment and you have no authority to decide such. You do not operate in an official capacity; nor is the Teen Court program a judicial proceeding.

Generally speaking, "a judge may participate in civic . . . activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties."² "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."³ A judge is not automatically prohibited from participating in civic activities. Participation is encouraged.⁴ "A judge may speak, write,

¹ See, Black's Law Dictionary.

² Canon 5(B).

³ Canon 5(B)(1).

⁴ See, Canon 4.

**lecture, teach, and participate in other activities concerning the law, the legal system, and
the administration of justice . . .”⁵**

⁵ Canon 4(A).

Based upon those governing Canons, the Committee believes you may participate in the Teen Court program as a Teen Court judge. It appears that the Teen Court program is similar to other diversion programs, except that there is no formal judicial involvement or judicial authority over the process or its results.⁶ The participants not only deal with the behavior of one of their peers, but are also exposed to the operation of the legal process in an educational setting. The Teen Court program is a non-judicial program, wherein the participation is voluntary and the judge, in a non-judicial capacity, oversees the proceedings and reviews the sentence of the jury.⁷

Accordingly, we find no violation of the Delaware Judges' Code of Judicial Conduct by your participation in the Teen Court program. We would note that caution should be exercised if the charged Teen Court juvenile does appear before you in your official capacity in any subsequent proceeding because of the juvenile's unsuccessful completion of the program. In those situations, your decision to be involved would be made based upon whether you feel you could be impartial under the guidance of Canon 3.

Sincerely,

William J. Walls, Jr.
for the Committee

WJW/plb

cc: Committee Members

⁶ Compare the Drug Diversion Program implemented in various Courts throughout the State.

⁷ See, e.g., The Digest of Judicial Ethics Advisory Opinions, La. Opinion 68 (September 10, 1986) at 259, (holding that judges may participate in a non-judicial "Teen Court." Participation is voluntary . . .); Texas Committee on Judicial Conduct, Ethics Opinion 273 (2001), (holding there is no violation of the Canons of Judicial Conduct for a judge to preside or supervise "Teen Court . . .).