

**JPC 1991-1**  
October 7, 1991

You have requested an opinion, concerning the propriety of your chairing a committee, presently identified as the Mental Health Code Revision Committee, to revise certain portions of the Delaware Code dealing with mental health (the Committee). This request implicates Canons 4 and 5. Canon 4B limits a judge's consultation with an executive or legislative body or official only to "matters concerning the legal system and the administration of justice." Canon 4C permits service on a "governmental agency devoted to the improvement of the law, the legal system or the administration of justice." Finally, Canon 5G advises that a judge "should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice."

While the purpose of the Committee seems commendable, its draft goal is to recommend proposed legislation for the Governor's 1992 "Legislative Agenda". That may have political implications, as well as other judicial problems. In the latter category, the Committee's charge is more concerned with the appropriateness of treatment and admissions. Thus, it is possible that the Committee's revisions may be controversial, thereby placing you, as chair of the Committee, in the awkward role of an advocate defending the revisions in a political atmosphere.

After studying the Code, Commentary, Reporter's Notes to the Code, and the Lubet Treatise, "Beyond Reproach", we conclude that the Committee and its charge does not fall within the intended meaning of the terms "legal system or the administration of justice". Generally, those terms are intended to relate to matters arising in and directly affecting the judicial branch. The charge to the Committee concerns an improvement relating to the operation of the Executive Department. Accordingly, we advise you that service as chairman of the Committee to revise the mental health laws is not within the area of activity permitted by the Code of Conduct.

In view of the time constraints, Judge Wakefield, who is out of town, did not participate in this opinion.

Andrew G. T. Moore, II, Justice Chairman  
Chancellor William T. Allen  
Judge Vincent A. Bifferato  
Judge Clarence W. Taylor  
Judge Paul E. Ellis  
Judge Alfred Fraczkowski