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can i or can't i?

extra-judicial activity and judicial leadership



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executive summary

Judicial ethics opinions across the nation articulate the importance of judicial involvement in off-the-bench activities that promote the law, the legal system, and the administration of justice. “Judges should use the Code of Judicial Conduct as a framework for participation, not as an excuse for withdrawing,” the Vermont Judicial Ethics Committee noted in Opinion 2728-12 (2004).

Recognizing that judges have grappled with the propriety of participation in extra-judicial activities for decades, the National Council of Juvenile and Family Court Judges’ (NCJFCJ) 2017-2018 Family Violence and Domestic Relations Steering Committee set the development of guidance on extra-judicial activity as a priority to encourage judges to engage in judicial leadership. This guidance is the result of the review of judicial ethics codes promulgated by states, the District of Columbia, Territories and tribes, as well as opinions issued by judicial ethics committees and commissions. This guidance is designed to serve as a tool for judges evaluating whether a proposed extra-judicial activity meets the requirements of the judicial code of conduct in the jurisdictions where ethics opinions have been published.¹

methodology

The NCJFCJ review of codes of judicial conduct in each state, the District of Columbia, the territories, and some tribal courts includes a comparison of those codes with the 2007 Revised American Bar Association Model Code of Judicial Conduct Canons 3.1, 3.2, 3.4, and 3.7. Reviews of available published opinions on extra-judicial activity from each state were used to prepare a synopsis of each opinion, which is included in a state-by-state chart that is available through the website’s judicial leadership repository. The review focused on opinions regarding judicial leadership, engagement and participation in government or private organizations, and multidisciplinary activities that may be led or convened by judges to address domestic violence, child welfare, juvenile law, family law, and judicial participation in specialty courts.²

conclusions from the review

The following conclusions were gleaned from the opinions that were reviewed:

- Opinions that address extra-judicial activities are consistent across the nation: There are no issues of bias, impropriety, or impartiality as long as there is a clear nexus between the activity and the law, the legal system, the administration of justice, and the purpose of the committee—coupled with “balanced” representation from the legal community, agencies engaged in the subject matter of the group, and others who may have an interest in the work of the proposed group or activity. Participation by advocates in such activities is not prohibited as long as there is balanced participation across the advocacy spectrum and the group does not appear to be promoting one position over another.
- There are no blanket prohibitions against specific activities. The ethics opinions turned on the specific facts presented by the inquiring judge. The opinions focused on the purpose, focus and composition of the group, and often turned on whether there is a nexus between that purpose and the law, the legal system, and the administration of justice.
- The opinions frequently discussed the importance of judicial involvement in coordinated community responses to issues including, but not limited to, domestic violence, juvenile justice, elder abuse, child protection, mental health, and substance abuse.
- The opinions often encouraged judges to lend their legal knowledge and experience to improve the administration of justice, the law, and the legal system as long as that engagement does not affect the judge’s ability to meet judicial duties without disqualification or without engaging in discussions about specific cases that may come before the court.
- Some opinions encourage judges to participate in off-the-bench activities and provide strategies that judges can use to shape or limit participation to eliminate any concerns that may arise without requiring the judge to forego participation or end all participation in the activity.

Despite differences in state judicial ethics rules, the opinions are generally consistent and create an analysis framework to assist judges in determining whether a proposed extra-judicial activity will meet the requirements of their jurisdiction’s code of judicial conduct.

the analysis framework

The following analysis framework emerges from the review of judicial ethics opinions and the application of the codes of judicial conduct. The NCJFCJ hopes that this framework will serve as a useful tool when evaluating the appropriateness of a proposed extra-judicial activity, with the proviso that any extra-judicial activity may not violate any other judicial canons. The framework can also be used to prepare a fact specific inquiry to the state judicial ethics committee or commission. The following questions form the basis for the analysis of a proposed extra-judicial activity:

- **What is the primary purpose of the committee, task force, organization, or activity?**
- **Is there a clear or direct nexus between the primary purpose of the activity and the law, the legal system, and the administration of justice?**
- **Is the membership of the committee or organization balanced?**
- **Will the committee or organization be viewed by the public as a political or advocacy group?**
- **Can the judge's participation be limited to eliminate any issues with participation?**

conclusion

During the past 25 years or more, judicial ethics opinions across the nation have become more analytical and have encouraged judges to participate in extra-judicial activities that promote the law, the legal system, and the administration of justice.

This document and the web-based supplemental material constitute the first package in the NCJFCJ's repository on judicial leadership that is designed to serve as a tool for judges as they evaluate whether it is ethical to engage in a proposed extra-judicial activity. The resource will be updated as new judicial ethics opinions are released and as states revise their codes of judicial conduct. The repository, which can be accessed at <https://www.judicialengagementnetwork.org/judicial-leadership/on-off-the-bench>, includes:

- The analysis framework presented above with cites to state judicial ethics opinions that address each of the points in the framework and its sub-elements.
- State-by-state judicial ethics opinions related to extra-judicial activity involving government and private entities as well as multidisciplinary activities.
- Charts that show the current status of judicial codes of conduct across the nation with comparisons to the 2007 Revised American Bar Association Model Code of Judicial Conduct Rules 3.1, 3.2, 3.4, and 3.7.

endnotes

- ¹ This document is not designed to provide ethics advice but is presented to offer a resource for judges interested in exploring whether a proposed extra-judicial activity is ethical using the approaches many judicial ethics committees and commissions have applied in responding to judicial inquiries.
- ² Among the court programs discussed in the opinions are drug courts but the discussions could apply to other specialty courts and the level of judicial leadership and engagement. The review does not include issues such as fundraising, political activity, or private matters that are considered extra-judicial. The review also includes the work completed by the NCJFCJ in 2012 which provided a survey and synopsis of advisory opinions to that date.



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