

GRIEF COUNSELLING

Opinion No. 101 (1987)

QUESTION: Would it be a violation of the Code of Judicial Conduct for a judge to work in conjunction with a professional therapist in group counseling of persons who have sustained grievous losses in their lives?

ANSWER: The committee has been informed that the classes are scheduled at such times as to not interfere with the judge's judicial duties and that the judge will be paid a stipend of \$200 monthly, apparently to cover the cost of required insurance.

Canon 5A permits a judge to speak and teach on non-legal subjects in his or her vocational activities provided those activities do not detract from the dignity of his or her office or interfere with the performance of his or her judicial duties. Subject to the limitations set out in Canon 5A,* the committee is of the opinion that it would not be a violation of the Code of Judicial Conduct for a judge to work with the described group counseling classes.

**Now see Canon 4A and B.*

DESIGNATION OF SAFETY DRIVING COURSE

Opinion No. 118 (1988)

QUESTION: Where a defendant elects to take a safety driving course in lieu of other penalty, may the judge designate a specific agency and course that the defendant attend?

ANSWER: Assuming that there is more than one agency offering a safety driving course, the committee is of the opinion that the judge may not designate a specific agency because Canon 2B prohibits a judge from lending the prestige of his or her office to advance the private interests of others.

JUDGE'S LETTER INCLUDED IN FOR-PROFIT PUBLICATION

Opinion No. 192 (1996)

QUESTION: A "for-profit" publisher of an excellent booklet dealing with substance abuse has asked a judge to write a letter on the judge's letterhead dealing with substance abuse to be included in the publication. The judge and law enforcement will be given free copies for distribution. May the judge write such a letter to be included in the booklet?

ANSWER: Yes, the judge may write a letter to be included in the booklet so long as the judge's letter cannot be interpreted as an endorsement of the booklet and the letter does not impact the appearance of impartiality on the part of the judge in the trial of related matters. Canon 2B specifically states that a judge should not lend the prestige of judicial office to advance the

private interests of others. Further, Canon 4 permits a judge to engage in activities to improve the law, the legal system, and the administration of justice; provided that in doing so, the judge's activities must not cast doubt on the judge's capacity to decide impartially any issue that may come before the Court.

JUSTICE OF THE PEACE SERVING AS CASA VOLUNTEER

Opinion No. 208 (1997)

QUESTION: Can a justice of the peace serve as a Court appointed special advocate (CASA volunteer) in the county in which he or she serves as a justice of the peace or in other counties?

BACKGROUND INFORMATION: The CASA program consists of community citizens trained and appointed by district judges to serve as volunteers to advocate for the best interests of children who are involved in the court system due to abuse, neglect or abandonment, and to aid in reducing the time spent by these children in foster care. According to the Texas CASA, Inc. Annual Report - FY96, there are currently 44 CASA programs covering 85 counties in Texas, serving approximately 6,537 children. CASA volunteers serve without compensation.

ANSWER: Yes, to both parts of the question. Canon 6(C) provides that a justice of the peace shall comply with all provisions of the Code of Judicial Conduct, except that he or she is not required to comply with several specified provisions, such as Canon 4(F) (acting as an arbitrator or mediator) or Canon 4(G) (practicing law, if an attorney). It would appear that serving as a court appointed special advocate for a child in court proceeding would be similar in nature to these non-prohibited activities, and it is the opinion of the ethics committee that a justice of the peace would therefore not be in violation of the Code of Judicial Conduct by serving as a CASA volunteer, provided further that he or she complies with Canon 3A (requiring that the judicial duties of a judge take precedence over the judge's other activities).

MAY A FULL-TIME FAMILY COURT ASSOCIATE JUDGE PRESIDE AS A MUNICIPAL JUDGE OR TEEN COURT JUDGE?

Ethics Opinion 273 (2001)

Question: May a full-time associate judge hearing family law matters serve as municipal judge and supervise Teen Court for a municipality?

Answer: Yes. There is no violation of the Canons of Judicial Conduct for an associate judge to preside as a municipal judge or supervise "Teen Court." The Committee is not considering any question of law presented by this question.

JUDGE PRESENTING CLE AT PRIVATE LAW FIRM

Ethics Opinion 276 (2001)

Question: May a judge speak at an in-house CLE event sponsored by a law firm? The audience will consist solely of employees of the law firm.

Answer: No. It is the belief of the committee that the presentation by the judge of a CLE program for a private law firm violates 2B of the Code of Judicial Conduct. Section 2B prohibits a judge from lending the prestige of judicial office to advance the private interests of others. It also prohibits the judge from allowing anyone to convey an impression that they are in a special position to influence the judge.

Question: If the law firm allows any lawyer not affiliated with the firm who wishes to attend the CLE event to do so without charge, but does not publicize the event, change the answer?

Answer: No, the same reasoning as above applies. With no invitations the CLE remains private.

Question: A judge is invited by a local bar association to speak at a CLE event sponsored by the bar association. Members can attend at a reduced price from non-members. The judge is not receiving any money from the entry fee. By speaking at an event whose entry fee schedule encourages membership in a bar association, is the judge promoting the private interests of that group?

Answer: A judge may speak at such an event. The event is open to all lawyers and therefore no one group of lawyers is benefitting from the event.

Question: A judge is invited to speak at a CLE event sponsored by a law school. The law school hopes to make money for their scholarship fund by virtue of the quality speakers they have recruited for the event. The judge knows this. By speaking at such an event is the judge lending the prestige of office to the private interests of the law school?

Answer: The judge may speak at the law school event. Canon 4B allows a judge to speak and participate in activities concerning the law. Canon 4C.(2) allows a judge to be a speaker at an educational organization's fund raising event.

Ethics Opinion Number 294 (2009)

LOCAL ASSOCIATION JUDICIAL LIAISON PROGRAM

FACTS: A local trial lawyers association has established a judicial liaison program. Under the program, the association will have one of its members assigned to each civil court in the county to act as the association's liaison for that court. The duties of the liaison include:

1. Introducing himself or herself to the judge and court coordinator and providing personal contact information;
2. Learning the court's unique rules and procedures and acting as a resource for other association members;
3. Investigation of any complaint by the judge, court coordinator or court staff about any member of the association and investigation of any concern or issue that the association has about the court;
4. Endeavor to meet personally with the judge at least every 60 days;
5. Attend all association functions that the judge attends and personally invite the judge to the appropriate association functions; and
6. Update the Board of the association regarding the court.

The program specifically requires liaisons to act within the bounds of judicial ethics as prescribed by the Code of Judicial Conduct and to comply with all ethical guidelines regarding communications with the court.

QUESTION: May a judge participate in this program?

ANSWER: No. A judge's participation in the program as described is not permitted by the Code of Judicial Conduct.

Canon 2 A. provides that a judge "should act at all times in a manner that promotes public confidence in the integrity and impartiality (emphasis added) of the judiciary." Canon 2 B. provides that a judge shall not "convey or permit others to convey the impression that they are in a special position to influence the judge."

A judge's participation in the program would join the judge and a faction of the bar in such a close relationship that the judge could not avoid the public appearance that Canon 2 A. and Canon 2 B. expressly prohibit.

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STATE COMMISSION ON JUDICIAL CONDUCT

PUBLIC STATEMENT No. PS-2006-1

In July of 2004, a press conference was held by a parents' rights group to announce the filing of a complaint against a judge who they accused of violating the Texas Code of Judicial Conduct for his extra-judicial service on several boards, including Texas CASA ("Court Appointed Special Advocates"). Based on the notoriety caused by the announcement, the State Commission on Judicial Conduct determined that the best interests of the judiciary and the public would be served by issuing this Public Statement addressing the Commission's position regarding the propriety of judges who serve on the Texas CASA board of directors.

Texas CASA, Inc. is a statewide, nonprofit organization devoted to the recruitment, training, and oversight of volunteers who serve as court-appointed special advocates for abused and neglected children in juvenile dependency proceedings. Volunteers for CASA are specially trained to advocate for the best interests of a child involved in a court proceeding. Although CASA may differ in some ways from typical advocacy groups such as MADD ("Mothers Against Drunk Drivers") or ATLA ("Association of Trial Lawyers of America"), it is nonetheless a victim advocacy group whose volunteers are partisan, not neutral, in the judicial process. In many cases a CASA volunteer's recommendations may conflict with the position taken by attorneys for the birth parents or even the minors themselves, all of whom are parties in the proceedings before the judge.

In general, judges are required to avoid impropriety and the appearance of impropriety in all of the judge's activities. Canon 2. In order to promote public confidence in the judiciary, it is not enough that a judge be fair and impartial when deciding cases, he must also *appear* to be fair and impartial. Canon 4A(1) of the Texas Code of Judicial Conduct addresses the appearance of impropriety and partiality by stating that "a judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge." While judges are encouraged to engage in civic and charitable activities, their participation is restricted to activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. Canon 4C. Likewise, if the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court, a judge should not serve as an officer, director, trustee or non-legal advisor of the organization. Canon 4C(1).

In order to avoid the appearance of impropriety and partiality, judges should be cautious about serving an organization, even one as noble and praiseworthy as CASA, when such an organization advocates a particular legal philosophy or position. This is especially true when the organization will be involved in proceedings likely to come before the judge. See Jeffrey Shaman, et al., *Judicial Conduct and Ethics* §9.10 (3d ed. 2000). While it is true that judges who serve any sort of advocacy group run the risk that the public will perceive that the judge supports the policy positions of that organization, judges who serve an organization like CASA would likewise endanger the public perception of the judge's impartiality for it would not be unreasonable for the public to believe that a judge who is affiliated with

CASA would endorse and be partial to CASA and the CASA volunteer's recommendations. When asked to rule in a case involving CASA, a judge's relationship with the organization may cause a perception that the CASA volunteer's opinion will be afforded greater weight because of the judge's connection with CASA. This would be true regardless of whether the board on which the judge would serve was local or statewide.¹

The Commission's position regarding a judge's service on CASA should be limited to those judges who hear cases in which CASA volunteers appear as advocates, or who have appellate jurisdiction over such cases. The Commission would note that the appearance of impropriety in some cases could be cured with a full disclosure of the judge's affiliation with CASA, on the record, followed with the informed consent of the parties and their counsel to allow the judge to continue to hear and decide the case. Naturally, if a judge were asked to recuse from cases too frequently because of the relationship with CASA, that judge should step down from his or her membership on the board. Canon 3B(1).

Finally, in concluding that such service by a judge could be improper, the Commission is not criticizing any judge's desire to serve CASA, nor is it suggesting that CASA is not a praiseworthy organization. Further, the Commission's position is based on the Texas Code of Judicial Conduct as it currently is written. If future revisions to the Code were to allow for such service by a judge, or if the Legislature were to provide statutory authority for a judge to serve such an organization, this Public Statement would have no further effect.

This Public Statement, issued pursuant to the authority granted by Article 5, §1-a(10) of the Texas Constitution, is intended to help preserve the integrity of all judges in the State of Texas, to promote public confidence in the judiciary, and to encourage judges to maintain high standards of professional conduct.

Signed this __18th__ day of _November_, 2005.

ORIGINAL SIGNED BY

Honorable James A. Hall, Chair
State Commission on Judicial Conduct

¹ See also Nebraska Judicial Ethics Opinion 05-1, issued January 20, 2005.