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**CJEO Oral Advice Summary 2019-027**

*[Posted January 29, 2019]*

**SERVICE ON A NONPROFIT ADVISORY BOARD INVOLVED IN CRIMINAL  
JUSTICE ISSUES**

**I. Question**

May a judicial officer serve on an advisory board of a nonprofit organization involved in criminal justice issues? The advisory board will be active in drafting legislation to reform part of the criminal law system and service may involve providing testimony before the Legislature or meeting with legislative sponsors. Members of the advisory board will include law professors and an attorney.

## II. Oral Advice Provided

The California Code of Judicial Ethics<sup>1</sup> makes clear that a judge or justice may engage in extrajudicial activities, including pursuits in nonprofit civic organizations dedicated to the law, the legal system, or the administration of justice. (Canon 4B [judges may participate in activities concerning legal subjects that are consistent with the requirements of the code]; canon 4C(1) [judges may appear before or officially consult with the a legislative body on matters concerning the law, the legal system, or the administration of justice]; canon 4C(3)(a) [judges may serve as nonlegal advisors to an organization devoted to the improvement of the law, the legal system, or the administration of justice]; canon 4C(3)(b) [judges may serve as nonlegal advisors to a nonprofit charitable or civic organization].)

Indeed, judicial participation in activities involving the law, the legal system, and the administration of justice is encouraged. The advisory committee commentary following canon 4B permitting involvement in both legal and nonlegal extrajudicial activities explains that judges are in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice because they are specially knowledgeable in the law. (Advisory Com. com. foll. canon 4B [a judicial officer is specially learned in the law and in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice].) Significantly, this commentary expressly identifies revision of substantive and procedural law and improvement of criminal justice as permitted activities. It also specifies that such participation may be through a group dedicated to the improvement of the law.

The permissions granted under canon 4B, however, must also be consistent with all other requirements of the code, which means that judicial involvement with a nonprofit group dedicated to the improvement of law must be squared with the canon 4C(3)

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<sup>1</sup> All further references to canons, the code, and to advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

limitation on judicial activities with civic and nonprofit organizations to participation as a nonlegal advisor. (Advisory Com. com. foll. canon 4C(3) [a judge is prohibited from practicing law or serving as a legal advisor under the code].) The advisory committee commentary following canon 4B again provides the explanation: the distinction between permissible nonlegal advisory service and impermissible legal service lies in the fact that judges are uniquely qualified to address matters falling within their judicial experience. Thus, the revision of substantive and procedural law encouraged under canon 4B is permitted nonlegal advisory service under canon 4C(3) when done from the judicial perspective.

This committee reached a similar conclusion with regard to judicial comment and consultation before public officials, including providing testimony at legislative hearings or consulting with legislators. (CJEO Formal Opinion 2014-006 (2014), *Judicial Comment at Public Hearings and Consultation with Public Officials and Other Branches of Government*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 6.) In CJEO Formal Opinion 2014-006, the committee examined canon 4(C)(1) and concluded that the reason judges are permitted to speak publicly or consult officially with other branches of government on matters concerning the law, the legal system, or the administration of justice, is that it benefits the lawmaking process, and therefore society, for judges to share their expertise in the law and the justice system with the other branches of government in a manner other than simply performing the duties of their office. (*Ibid.*)

As guidance for determining whether anticipated commentary or consultation is permissible, the committee explained that speaking from a judicial perspective allows judges to draw from their entire experience with the law while promoting the public trust in impartiality. (CJEO Formal Opinion 2014-006, *supra*, at pp. 7-9 [distinguishing permissible commentary about the effect of criminal legislation on the court system from impermissible advocacy directed at benefiting a particular group or social policy].)

The committee, however, cautioned that even permissible commentary must be considered in light of other code restrictions. (CJEO Formal Opinion 2014-006, *supra*, at pp. 9-11; Advisory Com. com., foll. canon 4C(1) [when deciding whether to appear at a public hearing or consult with a public official on matters concerning the law, the legal system, or the administration of justice, a judge should consider whether that conduct would violate any other provisions of the code]; Advisory Com. com., foll. canon 4C(3)(c) [it is necessary for judges to regularly examine the activities of organizations they serve due to the changing nature of some organizations and their relationship to the law].) Those considerations generally include whether the permissible activity might nonetheless detract from the dignity of office (canon 1), reflect adversely on the judge’s impartiality (canons 1 & 2), commit the judge with respect to the outcome of cases (canon 2A), convey a special position of influence or lend judicial title (canon 2B), interfere with the performance of duties (canon 3A), comment on pending or impending cases (canon 3A), or lead to frequent disqualification (canon 4A(4)). (CJEO Formal Opinion 2014-006, *supra*, at pp. 9-10.)

With these canons, conclusions, and considerations in mind, it is the committee’s view that the requesting judicial officer may serve on an advisory board of a nonprofit organization dedicated to improving criminal justice. Such service may include drafting legislation that will benefit the law or judicial system directly, serve the general interests of those using the legal system, or enhance the prestige, efficiency, or function of the legal system. Service may also involve providing testimony before the Legislature or meeting with legislative sponsors to provide a judicial perspective. However, these activities are permissible only so long as the judicial officer determines on a continuing basis that they are otherwise consistent with the obligations of judicial office required under the code.



*This oral advice summary is advisory only (Cal. Rules of Court, rule 9.80(a), (e); Cal. Supreme Ct. Com. Jud. Ethics Opns. (CJEO), Internal Operating Rules & Proc. rule 1(a), (b)). It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rules 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)).*