



**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**

350 McAllister Street, Room 1144

San Francisco, CA 94102

(855) 854-5366

www.JudicialEthicsOpinions.ca.gov

CJEO Oral Advice Summary 2019-031

[Posted August 15, 2019]

**EXTRAJUDICIAL SERVICE AS A ROTARY DISTRICT YOUTH
PROTECTION OFFICER**

I. Question

A retired judicial officer who regularly sits on assignment through the Temporary Assigned Judges Program inquires about whether volunteering as a Rotary International district youth protection officer would violate canon 4A of the California Code of Judicial Ethics,¹ which prohibits extrajudicial activities that might cast reasonable doubt on impartiality or lead to frequent disqualification.

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

II. Facts

The Temporary Assigned Judges Program (AJP) is an exercise of the Chief Justice's constitutional authority to assign retired judicial officers to fill vacancies on a temporary basis in courts requesting assistance. (Cal. Const., art. VI, § 6, subd. (e) ["The Chief Justice shall seek to expedite judicial business and to equalize the work of judges"].) The inquiring judge is an active AJP member who primarily hears cases in the counties served by a Rotary International (Rotary) district in which the judge is also a member.

Rotary is a volunteer community service organization consisting of local clubs organized into districts. The judge has been asked to serve as a youth protection officer for a Rotary district governing 78 local clubs.

Rotary is significantly involved in youth activities, and the volunteer position oversees programs to protect youths participating in those activities within the district. The duties of a Rotary district youth protection officer include: (1) acting as a point of contact for all youths involved in Rotary activities; (2) handling complaints of abuse by youths within the district; (3) informing and acting as a link to appropriate authorities such as law enforcement; (4) monitoring changes in the laws related to youth abuse and protection; (5) providing screening, selection, and training measures for adults involved in district youth programs; (6) maintaining records of abuse allegations; (7) monitoring and controlling background checks for adults participating in district youth programs; and (8) overseeing the proper handling of abuse allegations to protect the interests of all involved. (Rotary, *Rotary Youth Protection Guide*, p. 5.) District youth protection officers are selected by Rotary if they have professional experience related to these duties, such as a background in the law, law enforcement, counseling, or child development. (*Ibid.*)

III. Oral Advice Provided

While the code permits and encourages extrajudicial activities, it does so with limitations. (Advisory Com. com. foll. canon 4A [complete separation of judges from extrajudicial activities is neither possible nor wise]; canon 4C(3)(b) [a judge may serve as an officer or nonlegal advisor of a civic service organization, subject to the limitations and other requirements of the code].) Retired judges in the AJP are subject to these permissions and limitations. (Canon 6B [retired AJP judges are required to comply with all provision of the code, with exceptions inapplicable to civic organization positions]; Judicial Council of California, *Temporary Assigned Judges Program Handbook* (June 2019), Standards and Guidelines for Temporary Judicial Assignments, p. 14 [retired judges sitting on assignment shall comply with applicable provisions of the code].)

Two overarching limitations are the canon 4A(1) and (4) requirements that extrajudicial activities be conducted so that they do not lead to frequent disqualification or cast doubt on impartiality. More specific limitations are included in canon 4C(3)(b), which permits service as an officer of a nonprofit civic organization, but only as a *nonlegal* advisor. (Rothman et al., *Cal. Jud. Conduct Handbook* (4th ed. 2017) § 8:80, p. 570 (Rothman) [although a judge is permitted to serve on a civic organization board, the judge is prohibited from acting as a legal advisor].) Canon 4C(3)(c)(i) and (ii) further limit such service if the organization will be engaged in judicial proceedings before the judge or will frequently be engaged in proceeding in the judge's court or appellate district. (See Advisory Com. com. foll. canon 4C(3)(c) [judges should avoid leadership positions in organizations that regularly engage in litigation as it could compromise the appearance of impartiality].) Finally, judges are generally prohibited from practicing law by canon 4G and from using judicial title to advance the interest of others by canon 2C(2). (See Advisory Com. com. foll. canon 6C [retired judges serving in the AJP are bound by canon 4G barring the practice of law]; *Temporary Assigned Judges Program*

Handbook, supra, p. 14 [a retired judge serving on assignment shall not lend the prestige of the judicial assignment to advance the interests of the judge or others].)

With these permissions and limitations in mind, it is clear from the Rotary district youth protection officer duties and qualifications that service by a judicial officer would be prohibited under the code. While it seems unlikely that the retired AJP judge would *frequently* be assigned cases involving Rotary youth program issues, requiring disqualification and prohibiting service under canon 4A(4), or that the Rotary would *ordinarily* come before the judge in violation of canon 4C(3)(c)(i), it is likely, given the reasons for the protection officer position, that the Rotary will be involved in proceedings in the courts where the judge is primarily assigned, prohibiting service under canon 4C(3)(c)(ii). The question of whether the Rotary will *frequently* be engaged in those proceedings suggests the probability that whoever fills the Rotary district youth protection officer will be called as a witness or participant in *any* such proceeding in the courts where the AJP judge is primarily assigned. For a judicial officer, this would compromise the appearance of impartiality and improperly lend the prestige of office. (Canons 4A(1), 2B(2); Advisory Com. com. foll. canon 4C(3)(c); Rothman, *supra*, § 8:49, p. 551 [whenever a judge appears in court as a competent witness, the judge's testimony may be viewed as lending the prestige of office to advance the interests of one litigant over another].)

But more prohibitively, canons 4C(3)(b) and 4G, and the commentary following canon 6C, preclude practicing law or acting as a legal advisor to a nonprofit organization. (Rothman, *supra*, § 8:80, p. 570 [the practice of law includes providing legal advice].) Here, experience with the law is precisely what qualifies the judge for the Rotary district youth protection officer position. (*Rotary Youth Protection Guide, supra*, p. 5.) The stated duties of that position would necessarily entail giving legal advice when performed by the judge. For example, the responsibilities of the position include monitoring changes in the law related to youth abuse, providing training for adults about what

constitutes abuse, screening background checks, overseeing the proper handling of abuse allegations, and other activities that inherently involve advising the district and its members about the law. (*Ibid.*; Rothman, *supra*, § 10:36, p. 707, citing Cal. Judges Assn., Formal Opn. No. 61 (Aug. 2008), p. 5 [a judge may not serve on a church advisory committee that recommends actions to be taken regarding accusations of clergy sexual misconduct, which would implicate litigation and the practice of law].)

Finally, any participation by the judge in that role would appear to benefit the Rotary because of the judge's unique legal experience and judicial title. (Rothman, *supra*, appen. L, *Guide to Involvement in Community Activities and Outreach*, p. 961 [whether an organization is looking for legal advice or highlighting that one of its members is a judge is a consideration when applying ethical rules to determine if service is appropriate].) For all these reasons, the committee advises that service as a volunteer Rotary district youth protection officer is not permitted under the code.

IV. Conclusions

Extrajudicial service as a Rotary district youth protection officer is not permitted under the code where the qualifications for the position include legal experience and the duties of the position include providing advice about the law. Extrajudicial service as an officer of a civic organization is permitted so long as that service is as a nonlegal advisor. Practicing law, which includes providing legal advice, is prohibited for judicial officers, including retired judges active in the AJP. Judges are further prohibited from serving in civic organizations that will frequently be involved in adversary proceedings in the judge's court. The responsibilities of a Rotary district youth protection officer suggest the probability that such an officer will be called as a witness or participant in any proceedings involving the Rotary district's youth programs or practices, which would compromise the appearance of impartiality and lend the prestige of judicial office if performed by a retired AJP judge primarily assigned to cases within the district. Finally,

any participation by the judge in the role of district youth protection officer could impermissibly advance the interests of Rotary because of the judge's title.



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)). The conclusions expressed in this summary are those of the committee and do not necessarily reflect the views of the California Supreme Court or any other entity. (Cal. Rules of Court, rule 9.80(b); CJEO rule 1(a).)