



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

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CJEO Oral Advice Summary 2017-020

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**JUDICIAL SERVICE ON A NONPROFIT CREDIT UNION ADVISORY
COUNCIL**

I. Question

May a judge accept an invitation to serve on an advisory council of a nonprofit credit union? The invitation specifies that the advisory council was created to strengthen the flow of information between credit union members and its management team, and that the judge's role would be to provide feedback on service levels, evaluate new ideas, and make recommendations for the future of the credit union.

II. Oral Advice Provided

Judicial officers are prohibited by the California Code of Judicial Ethics from serving "as an officer, director, manager, or employee of a business affected with a public

interest, including, without limitation, a financial institution.” (Cal. Code Jud. Ethics, canon 4D(3).) In the *California Judicial Conduct Handbook*, Judge Rothman explains that “[t]his is a well-settled ethical principle based on the importance and power of such institutions in ... society and the need to keep the judicial office independent of them.” (Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) § 9.05, pp. 453-455.) Thus, he concludes, a judge cannot be a member of the board of directors of a bank or any other financial institution. (*Ibid.*)

The well-settled ethical principle Judge Rothman refers to has its foundation in several additional canons. (Cal. Code Jud. Ethics, canons 1 [judicial independence is indispensable to justice in society], 2A [a judge shall act at all times in a manner that promotes public confidence in the impartiality of the judiciary], 2B(2) [a judge shall not lend the prestige of judicial office or use the judicial title in any manner to advance the pecuniary interests of others], & 4D(1)(b) [a judge shall not engage in financial and business dealings that involve the judge in continuing business relationships with persons likely to appear before the judge’s court].) It is clear from the code as a whole that service in an advisory capacity to a nonprofit financial institution such as a credit union is prohibited in California.

Support for this conclusion is found in other states with similar canon restrictions. Significantly, the restriction on service with a financial institution was found to serve a compelling state interest and upheld as constitutional by the Supreme Court of one such state. (*Babineaux v. Judiciary Comm. of Louisiana* (La. 1977) 341 So.2d. 396, 400-404 (*Babineaux*) [canon prohibiting service on a bank board does not violate the due process, equal protection, or freedom of association rights of judges].) Indeed, in a state with less restrictive canon language that *permits* judicial service on the board of a business entity, the Supreme Court held that service as a director or advisor of a financial institution is nonetheless prohibited. (*Walson v. Ethics Comm. of Kentucky Judiciary* (Ky. 2010) 308 S.W.3d 205, 207 (*Walson*) [banks and other financial institutions are frequent litigants

and judicial service as an advisor or director would unquestionably lend the prestige of office to those institutions].) Both high courts upheld the restrictions because they serve “to reduce the possibility that a judge would, or would seem to, use the prestige of ... judicial office to attract business for the financial institution, to eliminate the potential conflict between a director’s fiduciary duty to the corporation and ...judicial office, and to lessen the possibility of conflict of interest for the judge revolving around litigation before the court.” (*Babineaux, supra*, 341 So.2d. 679-800, quoted in *Walson, supra*, 308 S.W.3d 211.)

In line with *Walson*, the judicial ethics advisory committees in a majority of other states have concluded that judges may not serve in *advisory positions* for banking institutions. (Tex. Comm. on Jud. Ethics, Op. 38, p. 1 [judicial service as an advisory director of a financial institution prohibited for lending prestige of office to advance the private interest of others]; Ariz. Sup. Ct. Jud. Ethics Advisory Comm., Op. 92-5, p. 1 [judges are strictly prohibited from serving as a director or advisor to a local bank, which would give reasonable grounds for suspicion that the prestige of office was being used to persuade others to patronize the business]; Ill. Jud. Ethics Comm., Op. 06-01 pp. 2-3 [judge may not serve on a bank advisory board under a court rule prohibiting financial or business dealings that (1) reflect adversely on impartiality, (2) interfere with performance of duties, (3) exploit judicial position, or (4) involve the judge in frequent transactions with those likely to come before the court].)

Specifically, the judicial ethics advisory committee of South Carolina advised a judge not to accept an invitation to join a local bank advisory body that did not make policy decisions but was created as a sounding board in the local community. (S.C. Advisory Comm. on Stnds. Of Jud. Conduct, Op. 6-1989, pp. 1-2.) The South Carolina Judicial Department Advisory Committee concluded that there was “a significant risk that a judge’s service on a bank’s advisory committee would be perceived by the bank’s

competitors as an indication of a lack of impartiality on the part of the judge.” (*Id.* at p. 2.)

Judicial ethics advisory committees in several other states have further concluded that judges may not serve in positions with *nonprofit credit unions*. (Fla. Sup. Ct. Jud. Ethics Adv. Comm., Op. 94-45, p. 1 [judicial service as a director of a credit union prohibited, regardless of the not-for-profit nature of the financial institution]; Okla. Jud. Ethics Advisory Panel, Op. 2004-4, p. 1 [service prohibited on the board of a not-for-profit credit union that is a business entity engaged in competition with other financial institutions].)

Here, too, the credit union’s invitation to provide feedback on service levels, evaluate new ideas, and make recommendations for the future of a business entity engaged in competition with other financial institutions would be impermissible under the California Code of Judicial Ethics. Such service could (1) reflect adversely on the judge’s impartiality towards the credit union, its competitors, or financial institutions generally, (2) reasonably be perceived as lending judicial title to the advancement of the credit union’s interests, or (3) potentially involve the judge in frequent transactions with a party likely to appear before the court on which the judge serves. (Cal. Code Jud. Ethics, canons 2A, 2B(2), 4D(1)(b) & 4D(3).) The committee advises against accepting the invitation.



This oral advice summary is advisory only (Cal. Rules of Court, rule 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) 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)).