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JUDICIAL SERVICE ON A NONPROFIT CHARTER SCHOOL BOARD

I. Question Presented

The Committee on Judicial Ethics Opinions has been asked to provide an opinion on the following question:

> "May a judicial officer serve on the board of a charter school or a nonprofit organization operating one or more charter schools? The charter school receives public funds but is not likely to be involved in litigation within the jurisdiction of the judge's court. It does not have an open enrollment policy and board membership is uncompensated and unelected."

II. Summary of Conclusions

Judges are encouraged to participate in extrajudicial activities, so long as these activities adhere to the restrictions within the California Code of Judicial Ethics.[1] One of these restrictions is that judges are prohibited from receiving appointment to a

[1] All further references to canons and to Advisory Committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. (Canon 4C(2).) However, canon 4 permits a judge to serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, service, or civic organization not conducted for profit, so long as such service does not violate any other provisions within the canons. (Canon 4C(3)(b).)

Charter schools are similar to both public and private schools. Like private schools, charter schools are commonly operated by nonprofit organizations. They are relatively autonomous and, for the most part, are given freedom to operate outside of most of the regulations governing traditional public schools. On the other hand, charter schools are statutorily characterized as a part of California's single, statewide public school system and receive public funds. Adding to the uncertainty, California courts have held that charter schools are public entities for some purposes (for example, for receiving public monies) but are private entities for other purposes (such as for purposes of the Government Claims Act), and that charter school officials are equivalent to officers of public schools.

In analyzing whether service on the board of a charter school is ethically permissible, the committee evaluated relevant case law and considered whether such service is a governmental position or public office and therefore prohibited by canon 4C(2) or whether it constitutes service on the board of an educational nonprofit organization that is permitted by canon 4C(3)(b). The committee also examined article VI, section 17 of the California Constitution, which provides that a judge is "ineligible for public employment or public office" and that "[a]cceptance of [a] public office is a resignation from the office of judge."

Because the law is unsettled on the question of whether a charter school board member holds a "governmental position" as that term is used in the canon, or a "public office" as that term is used in the Constitution, *and* because the Constitution absolutely proscribes a judicial officer from holding public office, a judge runs the risk of automatic resignation from judicial office if he or she serves on a charter school board. The

committee therefore advises that a judge not serve on a charter school board.[2] Based on the committee's recommendation, the committee does not address whether service on a charter school board may also cast doubt on the judge's capacity to act impartially, interfere with the proper performance of judicial duties, or lead to frequent disqualification as prohibited by canon 4A, or whether such service may also create an appearance of impropriety prohibited by canon 2.

III. Authorities

A. Canons

Canon 2: "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities."

Canon 4A: "A judge shall conduct all of the judge's extrajudicial activities so that they do not [¶] (1) cast reasonable doubt on the judge's capacity to act impartially,

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[2] This conclusion does not necessarily prohibit retired judges in the assigned judges program (AJP) from serving as members of a charter school board. Canon 6B provides that a retired judge who "has received an acknowledgement of participation in the Assigned Judges Program shall comply with all provisions of this code, except for" canon 4C(2) and canon 4E. Moreover, article VI, section 17 of the California Constitution "applies only to sitting judges and not to persons who have resigned or retired from a judicial office" and, therefore, retired judges are not prohibited from holding other public office or engaging in other public employment. (*Gilbert v. Chiang* (2014) 227 Cal.App.4th 537, 540-41.) The Chief Justice, however, has sole discretion to determine the eligibility of retired judges for service in the AJP. (Cal. Const., art. VI, § 6, subd. (e) [the Chief Justice has authority to assign consenting retired judges to any court]; Judicial Council of Cal., AJP Handbook: Standards and Guidelines for Judicial Assignments (Apr. 2016) p. 1 (AJP Handbook) [adopted by the Chief Justice in the exercise of constitutional authority to make assignments through the AJP].) The current AJP standards and guidelines do not expressly preclude appointment to a nonelected governmental position, but they do prohibit a judge from seeking or accepting elected or political office. (AJP Handbook, at pp. 5-7.) The AJP standards and guidelines also provide that the Chief Justice's discretion regarding assignment-based decisions is not limited by the AJP Standards and Guidelines, nor do the AJP standards and guidelines necessarily encompass all of the factors upon which the Chief Justice may base such decisions. (AJP Handbook, at p. 1.)

[¶] (2) demean the judicial office, [¶] (3) interfere with the proper performance of judicial duties, or [¶] (4) lead to frequent disqualification of the judge."

Canon 4C(2): "A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. . . ."

Advisory Committee commentary following canon 4C(2): *"The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges shall not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary, or that constitute a public office within the meaning of article VI, section 17 of the California Constitution.*

"Canon 4C(2) does not govern a judge's service in a nongovernmental position. See Canon 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system, or the administration of justice and with educational, religious, charitable, service, or civic organizations not conducted for profit. For example, service on the board of a public educational institution, other than a law school, would be prohibited under Canon 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Canon 4C(3)."

Canon 4C(3)(a): "[A] judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice provided that such position does not constitute a public office within the meaning of article VI, section 17 of the California Constitution . . . ."

Canon 4C(3)(b): "[A] judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, service, or civic organization not conducted for profit . . . ."

Advisory Committee commentary following canon 4C(3): "*Canon 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system, or the administration of justice. See Canon 4C(2).*"

Canon 4C(3)(c): "[A] judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization [¶] (i) will be engaged in judicial proceedings that would ordinarily come before the judge, or [¶] (ii) will be engaged frequently in adversary proceedings in the court of which the judge in a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member."

B. Other Authorities

California Constitution, article VI, sections 6 and 17

California Charter Schools Act (Ed. Code, § 47600 et seq.)

Abbott v. McNutt (1933) 218 Cal. 225

California School Bds. Assn. v. State Bd. of Education (2010) 186 Cal.App.4th 1298

Ghafur v. Bernstein (2005) 131 Cal.App.4th 1230

Gilbert v. Chiang (2014) 227 Cal.App.4th 537, 550

Knapp v. Palisades Charter High School (2007) 146 Cal.App.4th 708

Lungren v. Davis (1991) 234 Cal.App.3d 806

Wells v. One2One Learning Foundation (2006) 39 Cal.4th 1164

Wilson v. State Board of Education (1999) 75 Cal.App.4th 1125, 1139

Caviness v. Horizon Cmty. Learning Ctr., Inc. (9th Cir. 2010) 590 F.3d 806

Doe ex rel. Kristen D. v. Willits Unified School Dist. (N.D.Cal., Mar. 8, 2010, No. C 09-03655 JSW) 2010 WL 890158

Sufi v. Leadership High School (N.D.Cal. 2013) 2013 U.S.Dist.Lexis 92432, [2013 WL 3339441]

Judicial Council of Cal., AJP Handbook: Standards and Guidelines for Judicial Assignments (Apr. 2016)

67 Ops.Cal.Atty.Gen. 385 (1984)

Rothman, California Judicial Conduct Handbook (3d ed. 2007) sections 10.01, 10.02, 10.31, 10.36, 10.38

California Judges Association, Formal Opinion Nos. 31, 46, 61

California Judges Association, Judicial Ethics Update (1989)

Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 96-05

Colorado Judicial Ethics Advisory Board, Advisory Opinion 2007-02

Connecticut Committee on Judicial Ethics, Informal Opinion 2015-22

Delaware Judicial Ethics Advisory Committee, Advisory Opinion 2001-2

Florida Judicial Ethics Advisory Committee, Judicial Ethics Opinion 2016-01

New York Advisory Committee on Judicial Ethics, Advisory Opinion 11-44

South Carolina Advisory Committee on Standards of Judicial Conduct, Advisory Opinion 16-2002

IV. Discussion

A. Restrictions on Extrajudicial Activities

The California Code of Judicial Ethics governs the ethical conduct of judges both on and off the bench. Off the bench, community activity by a judge is encouraged, subject to limitations that minimize the risk of conflict with a judge's judicial obligations. (Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) § 10.02, p. 525 (Rothman) ["Although community activity is encouraged and considered a judicial duty, there are limitations that judges must know."].) While all extrajudicial activities must comply with the entirety of the code, canon 4 provides specific guidance to judges regarding extrajudicial conduct. In general, canon 4 requires a judge to conduct all of the judge's extrajudicial activities in a manner that does not cast reasonable doubt on the judge's capacity to act impartially, demean the judicial office, interfere with the proper

performance of judicial duties, or lead to frequent disqualification of the judge. (Canon 4A.)

Canon 4C(2) explicitly prohibits a judge from accepting "appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice." Stating the inverse, canon 4C(3)(a) permits service within an "organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice provided that such position does not constitute a public office within the meaning of article VI, section 17 of the California Constitution." Public educational institutions are governmental bodies. (See *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1190 (*Wells*) [a public school district cannot be sued under the California False Claims Act as the statute does not include governmental entities]; Advisory Com. com. foll. canon 4C(2); Cal. Judges Assoc., Judicial Ethics Update (1989) pp. 2-3 [a judge may not serve on a school board]; Rothman, *supra*, § 10.31, pp. 541-42 ["Membership on a public school board of education or a committee of same does not relate to the law, legal system, or administration of justice and, therefore, would be improper."].)

Canon 4C(3)(b), however, allows for a judge to "serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, service, or civic organization not conducted for profit," so long as such service complies with the remainder of the code. Specifically, a judge is further restricted from serving "as an officer, director, or nonlegal advisor if it is likely that the organization [¶] (i) will be engaged in judicial proceedings that would ordinarily come before the judge, or [¶] (ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member." (Canon 4C(3)(c).) Even if an extrajudicial assignment is permissible, "[t]he appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts

from involvement in extrajudicial matters that may prove to be controversial." (Advisory Com. com. foll. canon 4C(2).)

To summarize, canon 4C permits a judge to be a member of the board of a private educational institution and prohibits service on a public school board. Assuming compliance with the remainder of the code, a judge's ability to serve on a charter school board depends on whether such service constitutes a governmental committee or commission or other governmental position, i.e., whether canon 4C(2) or canon 4C(3)(b) applies. In deciding whether service on a charter school board is a governmental position, a judge must look to California's distinct legal framework regarding charter schools, examine the differences between traditional public schools and charter schools, and evaluate the instances in which charter schools are determined to be more akin to private or public institutions.

B. Charter Schools

a. Background

Through enactment of the Charter Schools Act of 1992 (Charter Schools Act) (Ed. Code, § 47600 et seq.), the Legislature intended "to improve learning; create learning opportunities, especially for those who are academically low-achieving; encourage innovative teaching methods; create new opportunities for teachers; provide parents and students expanded choices in the types of educational opportunities available; hold the charter schools accountable for meeting quantifiable outcomes; and provide 'vigorous competition within the public school system to stimulate continual improvements in all public schools.'" (*California School Bds. Assn. v. State Bd. of Education* (2010) 186 Cal.App.4th 1298, 1306, citing Ed. Code, § 47601.) In furtherance of these goals, charter schools are, for the most part, permitted to be autonomous. They operate independently from the existing school district structure and are "given substantial freedom to achieve academic results free of interference by the public educational bureaucracy. The sole relationship between the charter school operators and the chartering districts in this case

is through the charters governing the schools' operation." (*Wells, supra,* 39 Cal.4th at p. 1201.) A charter school may operate as a nonprofit benefit corporation, and such nonprofit's board of directors makes decisions that are specific only to the nonprofit organization and its charter school or schools. (Ed. Code, § 47604, subd. (a).)

Despite their independence, however, charter schools are subject to some of the same restrictions imposed on their traditional public school counterparts as well as oversight by the chartering authority. The school district that grants a charter is entitled to one representative on the board of directors of the charter school. (Ed. Code, § 47604, subd. (b).) They are also subject to, among other traditional public school requirements, a minimum number of school days and instructional minutes (*id*., § 47612, subd. (d)(3)-(4)), teacher credential requirements equivalent to those of other public schools (*id*., § 47605, subd. (l)), free tuition, and a prohibition on discrimination against students who wish to attend the school (*id*., § 47605, subd. (d)(1)). Absent these and a few other requirements, however, charter schools and their operators are "exempt from the laws governing school districts." (*Id*., § 47610; see *Wells, supra,* 39 Cal.4th at p. 1201.)

b. Charter Schools Are Public Schools and Charter School Officials Are Officers of Public Schools

Perhaps due to the hybrid structure of charter schools, which "in some respects blur[s] the distinction between public and private schools" (*Ghafur v. Bernstein* (2005) 131 Cal.App.4th 1230, 1239 (*Ghafur*)), it is unresolved whether a charter school is a public or private entity for all purposes. To allow for public funding, the Legislature has declared that charter schools are part of the public school system pursuant to article IX of the California Constitution. (Ed. Code, § 47615.) In *Wilson v. State Board of Education*, (1999) 75 Cal.App.4th 1125, the First District Court of Appeal examined the constitutionality of the Charter Schools Act and found that charter schools are within the mandatory state system of common schools and permissibly funded by public money. (*Id.* at pp. 1137-1141.) To establish that charter schools are constitutionally permissible, the court determined that charter schools are public schools, charter schools are under the

exclusive control of the officers of public schools, and "charter school officials are officers of public schools to the same extent as members of other boards of education of public school districts." (*Id*. at pp. 1139-1141.) Moreover, each charter school is deemed to be its own school district for purposes of statutory and constitutional funding allocations. (*Id*. at p. 1141; Ed. Code, § 47612, subd. (c).)

Applying the same logic used to find that charter school officials are akin to traditional public school officials, the First District Court of Appeal has determined that a former charter school superintendent was a public official for defamation purposes. The court first concluded that a traditional public school superintendent, though unelected, is a public official because the head of a school district has "substantial responsibilities in the operation of the [school] system" and the public has "a substantial interest in the qualifications and performance of the person appointed as its superintendent." (*Ghafur, supra,* 131 Cal.App.4th at p. 1238, citation omitted.)

Examining whether the same reasoning applied to a charter school superintendent, the court concluded that to differentiate the public official status of a public school superintendent from that of a charter school superintendent would "overlook 'the intent of the Legislature that charter schools are and should become an integral part of the California educational system' (Ed. Code, § 47605, subd. (b))." (*Ghafur, supra,* 131 Cal.App.4th at p. 1240.) Charter schools are public schools, and the positions of charter school superintendent and charter school board member are of equal public concern and importance as those of their traditional public school counterparts. Charter school superintendents retain "substantial responsibility for or control over the conduct of governmental affairs." (*Ibid*., quoting *Rosenblatt v. Baer* (1966) 383 U.S. 75, 85.) Therefore, at least for defamation purposes, the *Ghafur* court held that charter school board members and superintendents are equivalent to traditional public school board members and superintendents.

c. Charter Schools Are Both Public and Private Entities

Charter schools are not consistently treated as public or private entities for liability or immunity purposes. In some instances, charter schools have been determined to be arms of the state to establish immunity. (*Doe ex rel. Kristen D. v. Willits Unified School Dist.* (N.D.Cal., Mar. 8, 2010, No. C 09-03655 JSW) 2010 WL 890158 [charter schools are arms of the state for 11th Amend. immunity purposes].) In other instances, however, charter schools have been distinguished from public schools in determining liability.

In *Wells*, the Supreme Court held that, although "charter schools are deemed part of the system of public schools for purposes of academics and state funding eligibility, and are subject to some oversight by public school officials [citation], the charter schools here are operated, not by the public school system, but by distinct outside entities." (*Wells, supra,* 39 Cal.4th. at pp. 1200-1201.) Therefore, based on their private operation, the court determined that charter schools were not considered local public entities for purposes of the Government Claims Act. (*Id*. at p. 1214; see also *Knapp v. Palisades Charter High School* (2007) 146 Cal.App.4th 708, 717 [following *Wells* and concluding that the plaintiff was not required to present written claims to the charter school under the Government Claims Act before filing sexual harassment and tort claims].) The court further concluded that although traditional public school districts are not persons subject to suit under the California False Claims Act and the unfair competition law, charter schools and their operators are not public or governmental entities and not exempt from these laws "merely because such schools are deemed part of the public schools system." (*Wells*, *supra*, 39 Cal.4th at p. 1164; see *id*. at pp. 1179, 1202, 1204; see also *Sufi v. Leadership High School* (N.D.Cal., July 1, 2013, No. C-13-01598(EDL)) 2013 WL 3339441, at *8 [2013 U.S.Dist.Lexis 92432] [a charter school is not a state actor for purposes of 42 U.S.C. § 1983] (*Sufi*); *Caviness v. Horizon Community Learning Center, Inc.* (9th Cir. 2010) 590 F.3d 806, 812-814 (*Caviness*) [an Ariz. charter school is acting as a private actor in connection with employment decisions and not a state actor for purposes of 42 U.S.C. § 1983].)

As evidenced by the case law, a charter school can be considered a public or private entity depending upon the issue. (*Caviness*, *supra*, 590 F.3d at pp. 812-813 ["an entity may be a State actor for some purposes but not for others"].) Nothing affirmatively resolves whether service on a nonprofit charter school board is a governmental position for the purpose of judicial ethics. However, the decisions of a charter school board and a traditional public school board have substantially similar impacts, affecting the operation of the local school system and playing significant roles in local communities. (See *Ghafur*, *supra*, 131 Cal.App.4th at pp. 1238-1239.) The committee advises that based on the case law and the substantially similar impact that decisions of either a charter school board or a traditional school board have on a community, service on a local charter school board would likely be considered a governmental position.

d. Other State Advisory Opinions on Charter School Board Service

Judicial ethics advisory bodies in other jurisdictions are also divided on whether service on a charter school board constitutes a governmental position prohibited by the canons, supporting the committee's recommendation not to accept a charter school board position. Some states with similar canons, constitutional prohibitions on holding dual offices, and charter school laws as in California advise that a judge may not serve on the board of a charter school. The New York Advisory Committee on Judicial Ethics advises that a judge may not serve on the board of a charter school because, like public schools, a charter school may "generate quasi-political and highly controversial issues that could interfere with a judge's judicial duties and compromise his/her appearance of impartiality."[3] (N.Y. Jud. Advisory Com. Jud. Ethics, Op. 11-44.) The New York

[3] In New York, charter schools are also deemed public schools (N.Y. Educ. Law § 2853, subd. (1)(c)-(d)), and judicial officers are prohibited from simultaneously holding any other public office, absent limited exceptions (N.Y. Const., art. VI, § 20). Like the California canon, New York's canon 4 prohibits a judge from accepting appointment to a governmental committee, commission, or other governmental position that is not concerned with the improvement of the law, the legal system, or the administration of justice, but permits service as an officer, director, trustee, or nonlegal advisory of an

committee found "no reason to distinguish between service on a public school board and a public charter school board." (*Ibid*.) Similarly, a Florida Judicial Ethics Advisory Committee opinion advises simply that because in Florida, charter schools are part of the state's program on public education and all charter schools in the state are public schools, such service is prohibited. (Fla. Jud. Ethics Advisory Com., Opn. 2016-01.)

Other states have advised that service on a charter school board is permitted under the state's canons. The Arizona Supreme Court Judicial Ethics Advisory Committee, also with substantially similar canons, constitutional prohibitions on holding dual offices, and charter school laws, has determined that service on a charter school board is not a governmental position and is therefore permitted, subject to the other provisions within the canons. (See Ariz. Const., art. VI, § 28; Ariz. Supreme Ct. Rules, Judicial Ethics, rules 3.4, 3.7(A)(6); *Sufi, supra,* 2013U.S.Dist.Lexis 92432 [2013 WL 3339441] [comparing Ariz. and Cal. charter schools and finding that the two states have substantially similar charter school laws].) The Arizona committee has determined that, based on the purpose of the canon and the differences between charter schools and public schools and service on a local school board and a charter school board, "[m]embership on the board of directors of a non-profit corporation that operates a charter school is not a governmental position." (Ariz. Jud. Ethics Advisory com., Op. 96-5, p. 1.) Other states have reached similar conclusions. (See Conn. Com. on Jud. Ethics, Opn. 2015-22 [judicial officer may serve on the board of a nonprofit that consists of four public charter schools so long as the judge meets nine conditions within the canons]; Del. Jud. Ethics Advisory Com., Opn. 2001-2 [judge may serve as a board member for a military academy operated as a charter school after assuming that although publicly funded, the charter school would not be considered a governmental committee or commission]; Colo.

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educational organization not conducted for profit. (N.Y. State Rules of the Unified Court System, Rules of the Chief Admin. Judge, § 100.4(C)(2)(a), 100.4(C)(3).)

Jud. Ethics Advisory Bd., Op. 2007-02 [board of directors of a nonprofit public charter school is not a governmental organization and service on a charter school board in a different county and different judicial district was not prohibited]; S.C. Advisory Com. on Standards Jud. Conduct, Opn. 16-2002 [judge may accept appointment to serve on a charter school board in a county not served by the judge].) Significantly, however, none of these opinions address or resolve the concerns regarding dual offices, such as the prohibition within article VI, section 17 of the California Constitution and the potential for automatic resignation from judicial office if service on a charter school board is deemed a public office.

C. Prohibition on Holding Dual Offices

In addition to the restrictions within the code, service in a governmental position may also be prohibited by the California Constitution. Article VI, section 17, provides that a judge "is ineligible for public employment or public office other than judicial employment or judicial office." (Cal. Const., art. VI, § 17.) Most significantly, the acceptance of a public office "is a resignation from the office of judge." (*Ibid*.) Therefore, "[a]fter taking judicial office, a judge must be cautious in undertaking or accepting appointment to any local, county or state government position, board, agency or commission without first making sure that the position is not a 'public employment or public office other than judicial employment or judicial office.'" (Rothman, *supra*, § 10.01, pp. 524-525.)

Article VI, section 17 is "intended to exclude judicial officers from such activities as may tend to militate against the free, disinterested and impartial exercise of their judicial functions." (*Abbott v. McNutt* (1933) 218 Cal. 225, 229 [judges are prohibited from serving on a qualification board formed to submit a list of qualified candidates to the board of supervisors for a county manager position]; see also 67 Ops.Cal.Atty.Gen. 385 (1984).) Specifically, it is intended "conserve the time of the judges for the performance of their work, and to save them from the entanglements, at times the partisan suspicions, so often the result of other and conflicting duties." (*Abbott*, *supra*, 218 Cal. at

p. 229, quoting *In re Richardson* (1928) 247 N.Y. 401, 420.) The prohibition creates a distinct separation of the judiciary from the rest of the government, protecting the independence and impartiality of the judicial branch. (*Gilbert v. Chiang*, *supra*, 227 Cal.App.4th 537, 550; *Lungren v. Davis* (1991) 234 Cal.App.3d 806, 819.) These goals are closely aligned with the limitations on extrajudicial activities within the code.

Like the code, article VI, section 17 fails to define the term public employment or public office. It is, however, widely accepted that public school board members are public officials. (Cal. Const., art. VI, § 17; *Ghafur*, *supra*, 131 Cal.App.4th at p. 1238; Rothman, *supra*, § 10.01, p. 524.) It is less certain whether service on a charter school board is "public employment or public office" within article VI, section 17 of the California Constitution. (Rothman, *supra*, § 10.31, pp. 541-42 ["Memberships on boards of, or leadership positions in connection with, public educational institutions are governmental activities not related to the law, legal system, and administration of justice, and may amount to public employment or holding public office"].) If so, a judge is constitutionally ineligible for a charter school board position unless he or she resigns from judicial office. To accept a public office would result in automatic resignation from judicial office.

V. Conclusions

Judges are prohibited from serving in a governmental position that is not concerned with the improvement of the law, the legal system, or the administration of justice. (Canon 4C(2).) A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational organization not conducted for profit, so long as such service does not violate any other provisions within the canons. (Canon 4C(3)(b).) The committee believes that charter schools blur the distinction between governmental entities and nonprofit organizations, and service on a charter school board may constitute a violation of canon 4C(2), or implicate the constitutional provision prohibiting a judicial officer from holding public office.

The case law regarding whether service on a charter school board is a governmental position and therefore prohibited by canon 4C(2), or is a public office and therefore prohibited by the Constitution, is unsettled. Given the grave risk of *automatic resignation* from judicial office upon acceptance of a charter school board position, if such a position is ultimately found to be a public office, the committee advises against service on a charter school board.

This opinion 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 rule 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)).