



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

350 McAllister Street, Room 1144A

San Francisco, CA 94102

(855) 854-5366

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**CJEO Oral Advice Summary No. 2015-013**

*[Posted November 12, 2015]*

**JUDICIAL MEMBERSHIP IN A BOY SCOUTS OF AMERICA-SPONSORED  
EAGLE SCOUT ALUMNI GROUP**

**I. Question:**

Will the California Code of Judicial Ethics prohibit judicial membership in a local Boy Scouts of America (BSA) sponsored eagle scout alumni group after the canon 2C amendment becomes effective in January, 2016, and the “youth organization” exemption is eliminated from the ban on membership in organizations that practice invidious discrimination?

**II. Oral Advice Provided:**

Canon 2C<sup>1</sup> prohibits membership in “any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or

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<sup>1</sup> All further references are to the canons and Advisory Committee commentary in the California Code of Judicial Ethics.

sexual orientation.” The amendment to canon 2C that becomes effective in January of 2016 eliminates a canon 2C exception for membership in nonprofit youth organizations, such as BSA.

The Advisory Committee commentary to canon 2C advises that determining whether an organization practices invidious discrimination depends on such “relevant factors as whether the organization is dedicated to the preservation of religious . . . or other values of legitimate common interest to its members. . . . Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes members on the basis of . . . sexual orientation. . . .” (Advisory Com. commentary, Cal. Code Jud. Ethics, foll. canon 2C; see also California Judges Association Formal Opinion No. 34, p. 3 (CJA) [citing and applying the Advisory Committee commentary following canon 2C as a “test” to determine whether a men’s service club practiced invidious discrimination].)

Historically, BSA has prohibited youth and adult membership based on sexual orientation. In January, 2014, BSA adopted a [policy](#) that no youth will be denied membership on the basis of sexual orientation. In July, 2015, BSA adopted a policy that BSA employees and non-unit-serving volunteers will not be denied membership on the basis of sexual orientation. The policy also states that chartering organizations, such as those sponsoring local troops, have the right to select adult scout leaders based on the chartering organization’s religious and moral values concerning sexuality.

Given these policies, judicial membership in a BSA-sponsored eagle scout alumni organization is not prohibited under canon 2C, effective January, 2016, because the current BSA policy precludes invidious discrimination on the basis of sexual orientation for non-unit-serving volunteers such as the eagle scout alumni members. The fact that

BSA's policy may result in discriminatory practices by some chartering organizations in the selection of local troop leaders does not prohibit membership in a BSA-sponsored eagle scout alumni organization that does not discriminate. (Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) § 10.25, pp. 539-540 [a judge to be a member of a local group that does not discriminate against women even if the group is part of a national or international organization that allows invidious discrimination based on gender], citing CJA Opinion No. 34, pp. 3-4 [where an organization has made a formal decision to end discriminatory membership practices, but those previously excluded have not in fact yet been admitted, the judge who wishes to remain a member must hold a conscious belief that the open-membership policy is bona fide and will be implemented in the ordinary course of events].)



*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)).*