

Advisory Opinion #2000-01

(adopted September 11, 2000)

Question: *May a Children's Court Master serve on a local juvenile corrections facility's citizens' advisory committee? May a Superior Court Judge serve on a community committee to plan for a Child Advocacy Center (a facility for children who are victims of physical or sexual abuse)?*

Opinion: Canon 4C(2) of the Alaska Code of Judicial Conduct provides: "A judge shall not accept appointment to or serve on 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." Canon 4C(3) explicitly allows judges to serve as officers, directors, trustees, or advisors of organizations or government agencies "devoted to the improvement of the law, the legal system, or the administration of justice" or of other not-for-profit organizations subject to two basic limitations. The two limitations are: (1) That a judge cannot serve "if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or 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 judge's court." (2) Regardless of the nature of the organization or its role, the judge cannot engage in fund solicitation.

Judges also are obligated to avoid impropriety and the appearance of impropriety and to maintain the appearance of impartiality. Specifically, Canon 4A requires judges to conduct all activities so that they do not "cast reasonable doubt on the judge's capacity to act impartially as a judge." Fundamentally, whether a judge may sit on any board or committee, turns on whether that board or committee is devoted to the improvement of the law or the administration of justice, and, regardless of whether it is or not, whether participation by a judge would lead to an appearance of partiality in cases coming before that judge.

Both a juvenile corrections facility and a child advocacy center can be construed as being related to the administration of justice, as can an increasingly large number of various social service organizations. Consequently, the key issue will be whether a judge's participation as a member would create an appearance of partiality. Several factors will contribute to whether that appearance is created. These factors may include:

- (1) whether its members represent only one point of view or whether membership in the group is balanced;

- (2) whether the group will discuss controversial legal issues and those issues likely to come before the courts or merely administrative or procedural concerns;
- (3) whether the group will be viewed by the public as a political or an advocacy group or merely as an administrative group;
- (4) whether the group will take public policy positions that are more appropriate to the other two branches of government than to the courts or whether the policy positions could be viewed as clearly central to the administration of justice.

Regardless of any of these factors, judges may provide information on matters concerning the law or the administration of justice to groups in which their membership would be precluded by the Code.

Applying these factors to the two groups that the judicial officers presented, one appears permissible, the other does not. The citizens' advisory committee for the juvenile corrections facility appears to be permissible for judicial membership as it is composed of a cross-section of interested parties who will not be advocates for any particular single interest and the group will be limited to administrative concerns. The child advocacy center planning committee is not appropriate for judicial membership as its membership is prosecutorial in nature and it appears to be fundamentally an advocacy group regardless of the purely administrative function of this particular committee.

Finally, judges who participate as members of permissible groups should constantly keep in mind the Commentary to Canon 4C(3): "The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation."