

Advisory Opinion #2001-01

(adopted February 26, 2001)

Question: *May a Superior Court Judge serve on a state Children's Justice Act task force created by federal statute and requiring state judge membership?*

Opinion: This opinion supplements our Advisory Opinion #2000-01 in which we noted how Canon 4C(2) of the Alaska Code of Judicial Conduct restricts outside community activities of judges. That opinion summarized the Code's restrictions by stating: "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."

To assist judges in determining whether any commission, task force, or committee is appropriate for judicial membership, Advisory Opinion #2000-01 set out four factors as follows:

- (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, 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.

The mere fact that federal legislation requires state judge membership on a task force as a prerequisite for funding, does not preclude an independent ethics analysis by appropriate state judicial conduct commissions as to the propriety of state judges sitting in that capacity. Applying the listed factors to the state task force under the federal Children's Justice Act, Alaska judges may be members of the state task force if they limit

their involvement to public policy positions that are appropriate for the courts and are not legislative or executive in nature. The task force has balanced membership, including both defense and prosecution, and appears to be chiefly concerned with administrative solutions to child- abuse problems.

One other state has addressed judge membership on a Children's Justice Act task force. That state, South Carolina, restricted the judge's membership to a court coordination subcommittee of the task force. In noting its restriction, the South Carolina Advisory Committee observed that the subcommittee was designed to "narrowly address matters concerning the administration of justice." (South Carolina Opinion no. 8-1996) The South Carolina view, consistent with our own, was concerned with judicial membership on "governmental advisory committees because the scope of the judge's involvement was vague and could extend into issues of fact or policy matters other than the improvement of the law, the legal system and the administration of justice." (S.C. Op. 8-1996)

While there is no indication that at the present the Alaska judges' involvement on the state task force will be limited to a "court coordination subcommittee," vigilance by the judge members in limiting their participation to matters directly concerning the administration of justice can achieve the same result. The judge members should avoid that aspect of the task force's work that concerns the investigation and prosecution of child abuse and neglect. Those areas are most appropriate for the legislative and executive agencies of our state government. Once the task force is constituted, the judge members should explicitly define their membership roles and advise the entire task force of the ethical limitations on their participation.