

## Advisory Opinion #2007-01

(adopted January 22, 2007)

**Question:** *May a judge serve as a National Guard judge advocate?*

**Opinion:** A judge may serve as a National Guard judge advocate if the judge's role is limited to performing only those duties that do not resemble services provided by civilian attorneys for members of the military<sup>4</sup>. Alaska state court judges must comply with the Alaska Code of Judicial Conduct. Canon 4G of the Alaska Code prohibits judges from practicing law except for limited activity for the judge's family. Canon 2A requires judges to "avoid impropriety and the appearance of impropriety, and act in a manner that promotes public confidence in the integrity and the impartiality of the judiciary." And Canon 4 requires a judge to conduct all of the judge's extra-judicial activities in a way that will "minimize the risk of conflict with judicial obligations."

These Code provisions must be read together to guide a judge in determining whether duties required by service as a National Guard judge advocate would be permitted. The purpose behind the prohibition of practicing law is to ensure that the judge is not viewed in any way as an advocate or a less than impartial arbiter of the law. Judges are prohibited from assuming any role that could lead to the appearance that the judge is an advocate. Consequently, judges may not take any actions while serving as a National Guard judge advocate that would give the impression that the judge is an advocate on matters that concern the civilian justice system. Examples of impermissible activities include rendering legal advice and opinions on: environmental law, fiscal law, tort claims, administrative law matters, and discipline. Other impermissible activities include: serving as a recorder, legal advisor or military defense counsel or assisting military personnel in drafting personal legal documents such as wills or powers of attorney or advising in civil law areas such as consumer affairs and domestic relations. All of these roles are similar in nature to what civilian attorneys perform and could lead to an appearance of improper advocacy on the part of the judge.<sup>5</sup>

However, there are duties of the judge advocate that do not impact the judge's impartiality or appearance of impartiality. Those activities include: conducting training in the law of armed conflict, operations law, and international law. Judges are permitted to teach and training in these areas is compatible with the role of the judge.

So too, there is no apparent conflict or appearance problem for a judge who renders

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<sup>4</sup> This opinion is limited to the permissible activities of National Guard judge advocates performing duties while in state military status. The Alaska Commission on Judicial Conduct is not expressing an opinion on permissible activities of National Guard judge advocates who have been activated and are therefore subject to federal military orders.

<sup>5</sup> Our position is consistent with the views expressed by the Washington Ethics Advisory Committee in its opinion 04-8 and the Virginia Judicial Ethics Advisory Committee Opinion 03-4 that cautions "that certain types of legal assistance resemble the services provided by civilian attorneys. Performing those types of duties may give the impression that the judge is practicing law and could be a violation of Canon 2."

legal advice in a military capacity on a purely military issue. These purely military issues are issues without a civil law counterpart such as the law of armed conflict or operations law. Once again, the role here is limited to one of legal advice and should not involve the judge in appearing before a tribunal.