

**JUDICIAL ETHICS ADVISORY COMMITTEE
OF THE
STATE OF DELAWARE**

The Hon. Kenneth M. Millman., Chair
The Hon. Richard F. Stokes, Vice Chair
The Hon. Alan G. Davis
The Hon. Jan R. Jurden
The Hon. J. Travis Laster
The Hon. Michael K. Newell
The Hon. Charles W. Welch, III

JEAC 2012 - 1

May 7, 2012

[REDACTED]

**Re: Request for an Opinion from the Judicial Ethics
Advisory Committee**

Dear [REDACTED]:

By letter dated February 8, 2012, you have requested an opinion from the Judicial Ethics Advisory Committee ("Committee") as to whether you may serve as President of the [REDACTED] organization ("the Club") in approximately three years. As stated in your letter, the Club performs many charitable activities which are supported through fund-raising activities. The Club with which you are affiliated raises approximately \$75,000.00 per year through fund-raising.

Your letter does not define the duties of the president or how "intertwined" the duties of the president are with fund-raising. The Opinion of the Committee set forth herein is conditioned upon your role as president being insulated and separate from the fund-raising activities of the Club.

Delaware Judges' Code of Judicial Conduct

Your inquiry implicates Rule 3.7 of the Delaware Judges' Code of Judicial Conduct ("DJCJC"), which, in pertinent part, provides:

**RULE 3.7. PARTICIPATION IN EDUCATIONAL, RELIGIOUS, CHARITABLE,
FRATERNAL, OR CIVIC ORGANIZATIONS AND ACTIVITIES**

A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's independence, integrity, impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious,

charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

- (A) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.
- (B) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.
- (C) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

The Comment provided for this Rule allows a Judge to “...attend fund-raising activities of the organization although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of an organization’s letterhead for fund-raising or membership solicitation does not violate these Rules, provided the letterhead lists only the judge’s name and position in the organization, and, if comparable designations are listed for other persons, the judge’s judicial designation.”¹

A. Previous Decisions of the Committee

A review of past Opinions of this Committee does not reveal an opinion directly on point with your inquiry. However, the Committee has rendered a number of opinions under DJCJC Rule 3.7:

- A judicial officer was able to participate in a band which sold music to raise money for charitable activities since the judicial officer was “not personally soliciting funds.”²

¹ Del. Judges’ Code of Jud. Conduct, R. 3.7 (2012).

² Del. Jud. Ethics Adv. Comm., Op. 1998-3, 1998 WL 35398038 (February 18, 1998).

- A request by a judicial officer to serve as an auctioneer at an annual charity dinner was met with disfavor since the “general role of an auctioneer...is to encourage or solicit bidders to continue bidding on items to increase the sales price and raise greater funds...”³
- The Committee also concluded that there was no impropriety regarding a judicial member serving as chair of a Board of Directors of a non-profit corporation as long as the duties of the chairman did not include fund-raising activities.⁴
- Similarly, this Committee opined that it was acceptable for a Judge to serve as an honorary chair of an anniversary celebration of a local private school. The school, cognizant of the proscription against a judge engaging in fund-raising, established a separate volunteer structure for a capital campaign. The Committee approved the Judge’s participation in the celebratory events and allowed the Judge to participate as an honorary chair as long as it was not connected with the capital campaign.⁵
- Most recently, the Committee opined that a Judge could serve as a Master of Ceremonies at a dinner of a charitable organization. The critical factor that this Committee relied upon in reaching its decision was that the dinner was not intended as a fund-raising event.

Subsections A and C of Rule 3.7 are not implicated here since it is extremely unlikely that the Club would be engaged in proceedings before your Court, or would be regularly engaged in adversary proceedings in any court. It also does not appear that you are being called upon to give investment advice to the Club. As the above opinions demonstrate, the focus is whether the role of the judicial officer in the charitable organization is directly related to the solicitation of funds.

B. Judicial Ethics Opinions from States Other than Delaware

The Committee has also examined judicial ethics opinions from other states related to your inquiry. The Judicial Ethics Advisory Committees from other states (“Other State Committees”) have reached similar results regarding service as an officer of a non-profit organization or club. Specifically, the Other State Committees have held that a Judge may serve as an officer or on the Board of Directors of a non-profit organization as long as the Judge does not personally participate in the solicitation of funds or other fundraising activities and does not “permit the use of prestige of a

³ Del. Jud. Ethics Adv. Comm., Op. 2007-1, 2007 WL 7567061 (Mar. 5, 2007).

⁴ Del. Jud. Ethics Adv. Comm., Op. 1992-4, 1992 WL 12650312 (Feb. 11, 1992).

⁵ Del. Jud. Ethics Adv. Comm., Op. 1996-2, 1996 WL 34550886 (July 25, 1996).

judicial office” for that purpose.⁶ In addition, Other State Committees have found that due to “changing nature of some organizations and their relationship to the law,” Judges must regularly examine the activities of such organizations to determine if a continued relationship is proper.⁷

Conclusion

Rule 3.7 allows you to participate in civic and charitable activities that do not reflect adversely upon the Judge's “independence, integrity, impartiality or interfere with the performance of judicial duties.” You may also serve as an “officer, director, trustee, or non-legal advisor” of a charitable organization. However, pursuant to 3.7(B), you are prohibited and restricted from soliciting funds for the organization. You are further prohibited from participating in membership solicitation if the solicitation might be reasonably perceived as coercive or essentially a fund-raising mechanism.

The Committee concludes that you may serve as the President of the Club under certain conditions. There was some concern expressed by members of the Committee as to whether you will be able to insulate the Office of President from fund-raising activities. Therefore, you should exercise “elevated caution” if you accept the position since one of the functions of the Club is to perform charitable activities that are supported by fund-raising. In the event that you are able to keep separate your duties as president from the Club’s fund-raising function, then you may serve as President of the Club. You should also be vigilant not to allow the prestige of your judicial office to be used as a fund-raising mechanism. Therefore, as set forth in the comment to Rule 3.7, you should be careful as to how your name and office is listed on the Club’s letterhead.

However, if you conclude that the duties of the president are so intertwined with the fundraising activities of the Club that they cannot be separated out and performed by another officer, then you should decline to serve.

⁶ See Md. Jud. Ethics Comm., Op. 2011-04, 2011 WL 2255987 (Apr. 4, 2011) (holding that a Judge may not serve as a president of a civic organization that solicits funds from the public “if the president plays a prominent role in the fund-raising activity.”). See also Neb. Jud. Ethics Comm., Op. 11-2, 2011 WL 7637777 (May 24, 2011). Ala. Jud. Inq. Comm’n, Op. 04-837, 2004 WL 5917664 (March 12, 2004). Fla. Jud. Ethics Adv. Comm., Op. 2000-09, 2000 WL 35836956 (April 12, 2000). Ill. Jud. Ethics Comm., Op. 97-6, 1997 WL 252763 (May 7, 1997). Fla. Jud. Ethics Adv. Comm., Op. 94-41, 1994 WL 16822231 (October 10, 1994). Fla. Jud. Ethics Adv. Comm., Op. 89-12, 1989 WL 1693461 (June 28, 1989). N.Y. Adv. Comm. Jud. Ethics, Op. 89-64, 1989 WL 572149 (May 25, 1989). N.Y. Adv. Comm. Jud. Ethics, Op. 88-110, 1988 WL 546970 (Sept. 19, 1988).

⁷ See Neb. Jud. Ethics Comm., Op. 11-2, 2011 WL 7637777 (May 24, 2011). See also Md. Jud. Ethics Comm., Op. 2011-04, 2011 WL 2255987 (Apr. 4, 2011) (“[P]laying a highly visible role in an association that engages in public fund-raising as a primary activity requires the exercise of elevated caution on the part of the Judge.”).

For the Committee,



MICHAEL K. NEWELL
Judicial Ethics Advisory Committee



KENNETH M. MILLMAN, Chair
Judicial Ethics Advisory Committee

MKN/lmc

cc: The Honorable Carolyn Berger, Liaison Justice

Members of the Judicial Ethics Advisory Committee:

The Honorable Kenneth M. Millman, Chair

The Honorable Richard F. Stokes, Vice Chair

The Honorable Alan G. Davis

The Honorable Jan R. Jurden

The Honorable J. Travis Laster

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