

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

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THE HON. SHEILA G. BLAKELY  
THE HON. JOSEPH R. SLIGHTS, III

January 11, 2002

**JEAC 2002 – 1**

RE: Opinion from the Judicial Ethics Advisory Committee  
Volunteer Work for Avalon

Dear \_\_\_\_\_ :

You have requested an advisory opinion as to whether you may: 1) perform volunteer work for Avalon, a female juvenile detention facility, and 2) either donate, or permit Avalon to use, your pony. The volunteer work would consist of giving Avalon technical advice on the care of farm animals and evaluating the suitability of horses or ponies for adoption on an ongoing basis.

As described in your letter of December 5, 2001 and subsequent e-mail, Avalon is a private, non-profit facility which has a contract with the State of Delaware, Youth Rehabilitation Services, to provide pre-trial housing and may eventually contract with the Division of Family Services to provide several slots for dependent/neglected children.

You have also indicated that, in sentencings, you consider a written evaluation report from Avalon approximately twice a day, four out of five weeks. (The report is handed to you in Court by Avalon transportation staff.) In bail hearings, you hear requests for temporary placement at Avalon all day long, one week out of five. Thus, the relationship of Avalon to the Court can be characterized as both similar to an expert witness (for sentencing) and an agency which receives referrals from the Court (for pre-trial detention).

### **Applicable Canons of Judicial Conduct**

The Committee believes that your question is largely governed by Canon 5B of the Delaware Judges' Code of Judicial Conduct. Canon 5B states in pertinent part:

A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's 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, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) 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.

### **Prior Opinions of the Committee**

In previous opinions, the Committee has considered whether the organization for which the judge would be doing volunteer work is regularly engaged in proceedings in the judge's court. In its January 23, 1998 opinion, the Committee determined that a judge could serve on the Continuing Education Advisory Council for a university.<sup>1</sup> In so finding, the Committee stated: "This opinion is based on the conclusion that it is not

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<sup>1</sup> JEAC Opinion 1998-1.

likely that [the] University or the Continuing Education Advisory Council will be regularly engaged in proceedings in [your] Court...”.

Similarly, in its opinion of October 19, 2001, the Committee took note of the judge’s statement that it was not likely that the organization would be regularly engaged in adversary proceedings in the courts in finding that a judge’s service on the board of directors of a military academy would not violate Canon 5 B of the Code of Judicial Conduct.<sup>2</sup>

The Committee has also considered the impact of an out of court relationship between a judge and an expert witness. In its September 23, 1997 opinion, the Committee stated that the judge’s impartiality might reasonably be questioned with respect to professionals who were treating the judge’s child and who would serve as expert witnesses in a case before the judge.<sup>3</sup>

### **Discussion**

1. *Reports from Avalon.* Because you have indicated that you regularly consider reports from Avalon, the Committee believes that Avalon’s role in sentencing hearings is similar to that of an expert witness appearing before the Court, even though the author of the report is rarely, if ever, physically present in the courtroom.

Accordingly, we believe that your proposed volunteer work falls under the prohibition of subsection (1) of Canon 5B. This conclusion is consistent with the previously cited opinions of this Committee both with regard to volunteer work for an organization that

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<sup>2</sup> JEAC Opinion 2001-2.

<sup>3</sup> JEAC Opinion 1997-3. This opinion addressed the question of whether the judge should disqualify himself and found that, if the judge was satisfied that he could be impartial, he should follow the procedure for remittal of disqualification provided in Canon 3D. However, the concern regarding an out of court relationship between a judge and an expert witness is equally applicable to determining the appropriateness of a judge volunteering for an organization which regularly serves as an expert witness before the judge.

appears before the judge as well as with the opinion concerning an out of court relationship with an expert witness.

2. *Referrals to Avalon.* Although the Committee has not previously considered the issue of volunteer work for an organization to which a judge makes referrals, the Committee believes that performing volunteer work for an organization to which you also make referrals could bring you into conflict with Canon 5B's prohibition against a judge participating in civic and charitable activities which reflect adversely upon the judge's impartiality. In addition, most ethics opinions from other jurisdictions considering this issue have found that a judge should not volunteer with (serve on the board of) organizations which receive court referrals.<sup>4</sup> Thus, the need to make referrals to Avalon is a further basis for our determining that it would be inadvisable for you to undertake volunteer work for Avalon.

3. *Loaning or donating your pony.* The Committee believes that allowing the occasional use of your pony would be similar to volunteer work in that it would create a relationship between you and the detention facility which would bring you into frequent contact with an organization that regularly reports to you concerning juveniles in its care

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<sup>4</sup> Va. Ethics Advisory Committee Opinion 00-3 (Judge may not serve as a member of the board of a juvenile group home that accepts referrals from courts for its services); Fla. Advisory Opinion 93-40 (Judge should not serve on the board of directors of a mental health center that provides service to the chronically mentally ill where the judge frequently orders defendants to comply with counseling and/or monitoring of medication at the mental health center as a condition or probation or controlled release); N.Y. Advisory Opinion 95-31 (Family Court hearing examiner should decline to serve as a board member of a school for troubled youth to which the court refers juveniles if the need for frequent recusal results – recusal required from all matters that involve the school, the youths, or their families); W. Va. Advisory Opinion (September 3, 1993) (Judge who handles juvenile matters may not serve on advisory council of juvenile detention center). *But See* Az. Advisory Opinion 96-17 (Judge may sit on board of nonprofit that provides mental health services even though the nonprofit contracts to provide these services to the court as long as the judge is isolated from the process of contracting with the agency and the agency is not involved in proceedings that ordinarily come before the judge); Ala. Advisory Opinion 96-624 (reversing Opinion 96-624) (Judge may serve on board of a counseling program to which the judge refers juveniles who come before the court – noting that many other judges sat on similar boards).

and to which you make referrals. Thus, the Committee believes that such a loan would be inadvisable. In contrast, an outright donation of the pony, would not require the creation of such a relationship with the organization and no canon of the Delaware Judges' Code of Judicial Conduct prohibits donations by judges to non-profit organizations. Therefore, as long as the donation of the pony does not serve as the basis for a continuing relationship with the organization, the Committee believes that there is no hindrance to your outright donation of the pony.

**Conclusion - The Committee's Advice**

Although the Committee believes that your interest in helping troubled juveniles is commendable, it believes that your proposed volunteer work with this organization would not be advisable. Similarly, it is our opinion that lending your pony would create many of the same concerns as volunteer work for the agency and, thus, is also not advisable. However, the Committee does not see any hindrance to your outright donation of a pony to the facility, as long as the donation does not lead to an ongoing relationship with the organization outside the courtroom.

For the Committee

Sheila Blakely, Deputy Chief Magistrate  
Judicial Ethics Advisory Committee

Cc: The Honorable Myron T. Steele  
Members of the Judicial Ethics Advisory Committee  
The Honorable Stephen P. Lamb, Chair  
The Honorable Barbara D. Crowell  
The Honorable Mardi F. Pyott  
The Honorable James T. Vaughn, Jr.  
The Honorable Kenneth S. Clark, Jr.  
The Honorable Joseph R. Slights, III