

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

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

JEAC 2011-1

January 5, 2011

**Re: Request for Opinion from the Judicial Ethics Advisory Committee
Master of Ceremonies at Delaware Community Foundation Dinner**

Dear

By correspondence dated December 10, 2010, you have requested an expedited opinion from the Judicial Ethics Advisory Committee ("Committee") on whether you may participate as the Master of Ceremonies at a dinner for the Delaware Community Foundation, a charitable organization. The dinner is not designed as a fund raising event. It has been planned for the purpose of presenting the Allen Cup Award for Philanthropic

Service to two distinguished gentlemen and to announce the establishment of a scholarship fund.

With your correspondence, you have included a copy of the dinner invitation. The invitation provides a cost to attend the event and indicates, in parentheses, that “a portion of your donation will be tax deductible.” The Delaware Community Foundation has clarified this language by explaining to you that the tickets are priced to cover the cost of the dinner, but, if there is any money left over, the attendees will be advised of the amount so that it may be used as a tax deduction. For the reasons that follow, the Committee has determined that, pursuant to the Delaware Judges’ Code of Judicial Conduct (“Code”), you may attend the Delaware Community Foundation dinner as the Master of Ceremonies.

A. The Applicable Rules of the Code.

Your inquiry implicates Rule 3.7. In pertinent part, Rule 3.7 provides as follows:

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 association not conducted for the economic or political advantage of its members, subject to the following limitations:

(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.

The comment provided for this rule also explains that although a judge may attend fund-raising activities of the organization, the judge may not be a speaker, a guest of honor or featured on the program of such an event.

B. Previous Decisions of the Judicial Ethics Advisory Committee.

The Committee has found previous opinions that it has issued to be relevant to your request.

In Delaware Judicial Ethics Advisory Committee Opinion No. 1998-3, the Committee held that a judicial officer could participate in a band which sold music for the purpose of raising money for non-profit charitable entities. The Committee interpreted “solicit” to mean the personal solicitation of funds. The judicial officer did not personally solicit funds and the music did not specifically identify him or his office. Thus, the judicial officer’s action did not violate the applicable provisions of the Code.

In contrast, in Delaware Judicial Ethics Advisory Committee Opinion No. 2007-1, the Committee held that a judicial officer may not serve as an auctioneer at an annual fundraising auction and dinner. The Committee opined that the judicial officer serving as an auctioneer “would amount to permitting the [organization] to use ‘the prestige of the judicial office’ for the purpose of fund raising.”¹ Furthermore, the Committee determined that an auctioneer’s purpose is to solicit bidders and raise greater funds. Finally, the Committee held that acting as an auctioneer is tantamount to acting as a “speaker” at a fundraising event in violation of the applicable provisions of the Code.

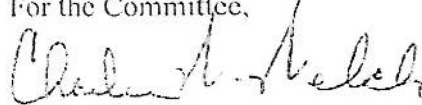
C. A Judge May Serve as a Master of Ceremonies at a Dinner for a Charitable Organization that is not Designed or Intended to be a Fund Raising Event.

It is the Committee’s opinion that you may serve as the Master of Ceremonies at the dinner planned by the Delaware Community Foundation to present the Allen Cup

¹ See Delaware Judicial Ethics Advisory Committee, Opinion No. 2007-1 (March 5, 2007).

Award for Philanthropic Service and to announce a scholarship fund. The major factor relied upon by the Committee is the fact that the dinner is not intended as a fundraising event and, actually, will only become a fundraising event if, by accident, the proceeds of the event exceed its costs. Additionally, the Committee believes that the scenario described by you for the dinner more closely resembles the factual scenario described in Delaware Judicial Ethics Advisory Committee Opinion 1998-3 and less like the one described in Delaware Judicial Ethics Advisory Committee Opinion 2007-1, since you will not be personally soliciting funds for the Delaware Community Foundation.

For the Committee,



Charles W. Welch, III
Judicial Ethics Advisory Committee



Kenneth M. Millman
Chair, Judicial Ethics Advisory Committee

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 Jan R. Jurden
The Honorable Alan G. Davis
The Honorable Michael K. Newell
The Honorable J. Travis Laster