

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

The Hon. Stephen P. Lamb, Chair  
The Hon. Barbara D. Crowell, Vice Chair  
The Hon. Mardi F. Pyott, Secretary  
The Hon. James T. Vaughn, Jr.  
The Hon. Kenneth S. Clark, Jr.  
The Hon. Sheila G. Blakely  
The Hon. Joseph R. Sights, III

April 13, 2004

The Honorable

**JEAC 2004 -1**

**Re: Opinion from the Judicial Ethics Advisory Committee:  
May a Judge Author a Foreword to an Autobiography  
Authored By a Friend?**

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

You have requested an advisory opinion from the Judicial Ethics Advisory Committee (the "Committee") on whether you may author a foreword to an autobiography being written by \_\_\_\_\_, a Delaware lawyer with whom you enjoy a close professional and personal relationship. You have advised the Committee that \_\_\_\_\_ will personally fund the publication of the book and donate all copies to the Delaware Bar Foundation, the charitable arm of the Delaware Bar Association. The Bar Foundation will then sell the book and retain the proceeds. You would sign the introduction "\_\_\_\_\_" without any reference to your judicial position or the \_\_\_\_\_ Court. Your letter does not describe specifically the anticipated content of the book but in follow-up discussions with you the Committee has learned that \_\_\_\_\_ will generally describe various aspects of his life with one emphasis being his life as a Delaware lawyer.

### **The Committee's Advice**

The Committee believes that you may author the foreword to \_\_\_\_\_'s autobiography under the circumstances you have described in your letter of \_\_\_\_\_, 2004.

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

The Committee has identified three Canons of Judicial Conduct that may be implicated by your request. The first, Canon 2B, provides in pertinent part:

A judge should not lend the prestige of the judicial office to advance the private interests of others.

The second, Canon 4A, provides:

A judge may speak, write, lecture, teach and participate in other activities concerning the law, the legal system, and the administration of justice.

Finally, Canon 5A, provides:

A judge may write, lecture, teach and speak on non-legal subjects . . . if such avocational activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties.

### **Analysis**

The Committee has not previously addressed the specific questions posed in your letter. The Massachusetts Committee on Judicial Ethics, however, considered a nearly identical request for guidance and reached the same conclusion the Committee has reached here.<sup>1</sup> According to the Massachusetts opinion, a judge on

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<sup>1</sup> Massachusetts CJE Opinion 93-2.

the Massachusetts Probate and Family Court was asked to write the foreword to a book on divorce to be written by a lawyer the judge did not know. The judge was not to be paid for his work.<sup>2</sup>

The Massachusetts Committee begins its analysis by noting that Canon 4 encourages judges to write about the law and opines that “writing a foreword to another person’s book falls squarely within the permission granted by Canon 4.”<sup>3</sup> Although the opinion goes on to acknowledge the limitations placed on the judge by Canon 2B, it concludes that “however broad the coverage of Canon 2B may be,” it does not preclude a judge from writing a foreword for a book on the law on behalf of a “private party.” Such endeavors are consistent with the judge’s right and, indeed, his responsibility “to improve the law, the legal system, and the administration of justice” by offering his contributions to “law-related activities.”<sup>4</sup>

The Massachusetts’ Committee’s opinion directly supports this Committee’s conclusion. Although the book involved in the Massachusetts scenario more directly implicated Canon 4A because it dealt strictly with a legal topic (divorce), and likely would attempt a scholarly analysis of that subject, the Committee is satisfied that \_\_\_\_\_’s autobiography, by virtue of his years of experience with the law and the legal profession, likewise will be “law-related” as contemplated by Canon 4A. The Committee also is satisfied that use of the \_\_\_\_\_ book by both lawyers and non-lawyers will likely “improve the legal system and the administration of justice.” The fact that you know the author so well, and know that the publication of the book is not intended to be a profit-making venture, makes this an even stronger case for permission to proceed under the Canons than the scenario considered by the Massachusetts Committee.

Although none of the Committee’s prior opinions are directly on point, the Committee has, on prior occasions, construed each of the Canons implicated here

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

under analogous circumstances. For instance, with respect to Canon 2B, the Committee has opined that a judge could participate in a seminar sponsored by a for-profit corporation as long as the judge “[took] care to avoid the impression that the prestige of the judicial office [was] being used to advance the private interests of another.”<sup>5</sup> In this regard, the Committee cautioned: “the judge must be assured that the judge’s title or office will not be used in promotional materials in a way that calls special attention to the office so as to encourage participation or attendance in the seminar.”<sup>6</sup>

The Committee assumes that you will maintain editorial control over the content of the foreword you write for the book and will ensure that your text does not “call special attention” to your title or office “so as to encourage” purchase of the book.<sup>7</sup> The Committee also suggests that before giving final approval for the use of your foreword you review the manuscript and any promotional materials that mention your name to ensure that the “prestige of the judicial office” is not abused. An opinion of the Committee in 1997 further supports your proposed involvement with the \_\_\_\_\_ book. In it, a judge requested guidance from the Committee with respect to his desire to research and then publish data regarding Milford High School’s unsuccessful 1954 integration efforts. The Committee concluded that Canon 2B did not proscribe the judge’s involvement

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<sup>5</sup> JPC Opinion 1995-1.

<sup>6</sup> *Id.*

<sup>7</sup> In the context of the Canons’ recognition that judges should not assist in the solicitation of funds for private, civic or charitable causes, this Committee has adopted the Black’s Law Dictionary definition of “solicitation”: “Asking; enticing; [an] urgent request.” See JEAC Opinion 1998-3, at 2 (citation omitted). The definition of “solicit” includes such acts as to ‘agitate, move, entreat, to make petition to, to move to action, serve as an urge or incentive to; incite, to endeavor to obtain by asking or pleading.’” *Id.* (citation omitted)(Committee opined that a judge could allow a musical group with which he was affiliated to receive funds for a piece of music assuming the judge did not “solicit” the funds and “the recording [was] identified as having been performed by the name of the group to which [the judge] belong[ed] and the name of the group [did] not refer to [the judge’s] office”). These definitions may offer some guidance to you as you consider whether any of the language of your foreword or promotional material for the book use your title or office to encourage or solicit interest in acquiring the book.

with this project *inter alia* because “the primary goal of the project is to document a historical aspect of education in Milford . . . , and that any financial gain would be secondary.”<sup>8</sup> Although the history to be documented in the \_\_\_\_\_ book is different, the focus and goal of the project is the same. Financial gain, if any, is secondary to the desire of a Delaware lawyer to document his experiences as a Delaware resident and lawyer and to share those experiences with others.

In 1996, the Committee encouraged a judge to accept an invitation to lecture on corporate law at several seminars overseas sponsored by both public and private interests.<sup>9</sup> In doing so, the Committee emphasized the comment to Canon 4A:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice. To the extent that the judge’s time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.<sup>10</sup>

This opinion supports the notion endorsed by the Massachusetts Committee (as noted above) that judges should be encouraged to contribute their efforts to the improvement of the law and the legal profession.

To the extent the \_\_\_\_\_ book is not law-related, Canon 5A would still sanction your involvement with the project. This canon permits judges to write on non-legal subjects. The comment to this canon notes: “Complete separation of a judge from extra-judicial activities is neither feasible nor wise; a judge should not become isolated from the society in which the judge lives.”<sup>11</sup> The Committee has recognized this thoughtful rede in opinions too numerous to cite

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<sup>8</sup> JEAC Opinion 1997-1.

<sup>9</sup> JEAC Opinion 1996-1.

<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> Delaware Judge’s Code of Judicial Conduct, Canon 5A, comment.

here.<sup>12</sup>

### **Conclusion**

The Committee concludes that you would not violate the Delaware Judge's Code of Judicial Conduct by writing the foreword to the \_\_\_\_\_ autobiography under the circumstances outlined in your \_\_\_\_\_, 2004 letter. Of the potentially applicable canons of conduct, Canon 2B presents the only limitation to your involvement with this project. The Committee is satisfied, however, that your proper exercise of editorial control over the content of your contribution to the book, and any promotional materials that accompany the book, will alleviate any concerns raised by Canon 2B.

For the Committee:

Joseph R. Slights, III  
Judicial Ethics Advisory Committee

cc: Liaison Justice  
Members of the Judicial Ethics Advisory Committee

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<sup>12</sup> See e.g. JPC Opinion 1992-1(judge may serve as member of educational forum); JPC Opinion 1992-4(judge may serve on the board of a non-profit theatrical organization) ; JEAC 1996-2(judge may serve as chair of an event at local independent school); JEAC 2001-1(judge may serve as "teen court" volunteer judge).