

JEAC 1997-1

April 11, 1997

The Committee has reviewed your request for an opinion as described in your letter of February 14, 1997 to Vice Chancellor Balick. As we understand the facts, you graduated from Milford High School in 1954. During that period, there were unsuccessful efforts to integrate the school. You wish to research, document and possibly publish any findings regarding those efforts. Research will consist of reviewing records, reviewing publications and interviewing individuals. This project will be pursued jointly with a "long-time friend" who also graduated from Milford High School during that period.

In reviewing the Delaware Judges' Code of Judicial Conduct, we do not find the project is prohibited in its conceptual form. Canon 2B prohibits a judge from lending the prestige of the judicial office to advance the private interest of others. In this instance, our understanding of the facts is that the primary goal of the project is to document a historical aspect of education in Milford prior to 1964, and that any financial gain would be secondary. Therefore, the proposed activity would not violate this Canon, since it does not essentially seek to advance the private interest of a third party. Similarly, we do not think that the provisions of Canon 3C(2) have application under these facts. Canon 3C requires a judge to disqualify himself or herself where his or her partiality might be questioned. Subsection (2) addresses disqualification on the basis of financial interest of the judge or his family. The facts indicate no involvement of family and only a potential financial question regarding the project.

The provision of Canon 3A(6) which pertains to judicial abstinence from public comment on matters before the Court does not directly apply here. However, investigations of this nature are very sensitive and caution should be exercised to ensure that any comments by you or other persons working with you on this project focus on its academic value.

In examining the issue of avocational activities, it must be analyzed in the context of Canon 3, which provides that the judicial duties of a judge take precedence over all other activities. Thus, while it is not conceivable nor wise to attempt to separate oneself from the community where one lives, any avocational activity must not detract from the judge's office. While we do not find Canon 5A limits undertaking this project, the Committee assumes that the time demands of this project will not interfere with your judicial duties. Furthermore, it should be made clear at all times that this is a personal research project not connected nor related to your official duties as a judge. Therefore, no correspondence or communication may contain any reference to your judicial office.

Your letter does not seek an opinion on remuneration, but does indicate that the issue of personal financial interests must be addressed. Therefore, we wish to bring to your attention Canon 5C(2). That provision prohibits a judge from acting as an "officer, director, partner, manager, advisor or employee of any business, other than a business closely held and controlled by members of the judge's family".

The essence of our view is that we do not see any provision of the Delaware Judges' Code of Judicial Conduct which prohibits this project as presently suggested.

Alex J. Smalls for the
Judicial Ethics Advisory Committee