

**Informal Opinion 15-01**  
**November 10, 2015**

**Question:**

The Judicial Conduct Commission seeks an opinion on whether a full-time justice court judge may ethically serve as the national president of an organization dedicated to advancing the social, political, and economic well-being of a specific ethnic group.

**Answer:**

Based on the examples the Committee reviewed from the organization's website, the Committee concludes that a full-time justice court judge may not ethically serve as president of such an organization.

**Discussion:**

The Judicial Conduct Commission has posed the following question: "Can a full-time justice court judge ethically serve as the national president of [an ethnic group advocacy organization]?"<sup>1</sup> To assist the Committee, the Judicial Conduct Commission provided references to materials from the organization's website. The organization promotes itself as "a national membership driven organization dedicated to advancing the social, political, and economic well-being" of the ethnic group served by the organization. The name of the president is found on the website. The president's bio includes the fact that the president is a sitting judge and the judge's title is used throughout the bio. The organization's website includes press releases and other materials describing the organization's activities and its positions on various social and political issues.

In the press releases, the president's name is usually mentioned and the president is often quoted. In recent press releases the organization: announced that it had filed an amicus brief in a federal case; applauded the launch of a presidential program; commended the U.S. Supreme Court for decisions in several cases; applauded the introduction of legislation on certain issues; criticized statements made by presidential candidates; called for a national dialogue on

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<sup>1</sup> The Ethics Advisory Committee has chosen not to name the organization mentioned in the Judicial Conduct Commission's request. Under Rule 3-109, the Judicial Conduct Commission may request an opinion about the conduct of others when the answer to the question is of general interest to the judiciary. In order to focus this opinion on the issues that will be of interest to the entire judiciary, the Committee will focus on the type of organization at issue. However, in answering this opinion request, the Committee will reference materials from the organization and the Committee bases its decision on those materials.

responsible gun ownership; extended sympathies to families of recent mass murder victims; and called for the end of deporting undocumented immigrants.

Based on the Committee's review of the organization's website, the Committee concludes that a judge may not serve as president of such an organization. The Committee's conclusion is based on concerns that fall into four areas: 1) speaking on legislative issues that do not involve the law, the legal system, or the administration of justice; 2) commenting on pending cases; 3) expressing opposition to political candidates, and commenting on political issues; and 4) fundraising.

### **Service with Civic Organizations:**

Rule 3.7 of the Utah Code of Judicial Conduct states that a judge may serve as an officer of a civic organization. There are, however, restrictions on service. Rule 3.7 states that a judge may not serve as a legal advisor to a civic organization nor may a judge engage in fundraising or membership solicitation. Service is also specifically subject to rule 3.1, which states that service may not interfere with the judge's judicial duties, and service must not undermine the judge's independence, integrity, or impartiality. As with a judge's other extrajudicial activities, service is also subject to other provisions of the Code. The other Code provisions of particular interest are: rule 1.2, which requires a judge to act in a manner that does not undermine public confidence in the independence, integrity, and impartiality of the judiciary; rule 2.10, which prohibits a judge from communicating on pending cases; rule 3.2, which restricts a judge's consultations with other branches of government; and Canon 4, which restricts a judge's political activities.

The question of whether a judge may serve as an officer of a particular organization is ultimately resolved by looking at the activities of the organization and the role of the officer.

### **Legislative Activities:**

A judge is prohibited from certain activities involving the other branches of government. Rule 3.2(A) states that a "judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except . . . in connection with matters concerning the law, the legal system, or the administration of justice." The prohibition applies whether a judge is acting professionally or personally.<sup>2</sup> In Formal Opinion 89-1, the Judicial Council determined that this provision applies when a judge serving as president of the State Bar makes recommendations to government bodies, or otherwise takes public positions on political issues, whether or not the judge as president directly communicates with the government body. The prohibition thus applies whether the judge appears personally before a government body, or the judge sends a written communication directly to the government body, or the judge communicates indirectly, such as through an intermediary.

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<sup>2</sup> The rule permits a judge to act pro se on matters involving the judge's legal or economic interests.

Because a judge occupies the position of authority in the judicial branch, a judge may not become involved in activities of the other branches of government except to the extent that those activities directly impact the judiciary. The prohibition in 3.2 aligns with other Code provisions requiring a judge to maintain the independence of the judiciary. Rules 1.2 and 3.1 require a judge to engage in activities that do not undermine public confidence in the independence of the judiciary. Reading all these provisions together, the Committee concludes that the provisions prohibit a judge from publicly expressing views on political issues, except for those issues involving the law, the legal system, and the administration of justice, or issues directly impacting the judge's legal or economic interests.

The Committee has previously discussed the intended parameters of “the law,” “the legal system,” and “the administration of justice” and the extent to which judges may comment on those issues. In Informal Opinion 01-1, the Committee noted that, “[r]ead broadly, this would permit judges to take positions on practically everything the legislature does, because the legislature’s activities also concern the law.” The Committee stated, however, that “the canons should [not] be construed so broadly.” The Committee emphasized that “the issues on which judges can speak must have a connection to the regular judicial or administrative activities of a judge.” The Committee stated that the issues must have a “direct and primary connection to the law, the legal system, and the administration of justice.” In Formal Opinion 89-1, the Judicial Council addressed this provision in relation to a judge’s activities as president of the Utah State Bar. The Judicial Council noted that the phrases “the law,” “the legal system,” and “the administration of justice,” could be subject to broad constructions. However, the Council stated that “the reach of the canon is not that broad and, indeed, was intended to be comparatively narrow.” Therefore, under rule 3.2, a judge may only publicly comment on legislation that has a direct connection to the regular judicial or administrative duties of a judge.<sup>3</sup>

The Committee has reviewed several press releases from the organization in which comments were made about legislation. In one press release the organization applauded the introduction of the Voting Rights Advancement Act. The press release noted that the Act would help eliminate voter ID laws that are inherently racist and discriminatory. In another press release, the organization applauded the introduction of a bill that included broadband as an option in the Lifeline program. Another press release praised amendments to the Justice For Victims of Trafficking Act. The amendments increased penalties for human trafficking, and the amendments dedicated funds received from the increased penalties to enforcement and victim assistance. The release also criticized attempts to amend the legislation. The releases included the president’s name and a couple of the releases included comments from the president.

Although these pieces of legislation deal with the law in the broadest sense, they do not have a direct and primary connection to the judiciary or the regular duties of a judge. These

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<sup>3</sup> The Council provided examples, stating that judges may speak on matters such as “court personnel, budget, housing, and procedures related to the operation and administration of the court.”

public statements on political issues are thus beyond the scope permitted by the Code of Judicial Conduct. The Committee does not see a way in which a judge would be able to serve as a president of the organization and not be tied to these types of press releases. Therefore, a judge may not serve as a president of an organization that publicly expresses views on legislation and political issues that are not directly connected to the activities of a judge or the judicial system.

### **Comment on pending cases:**

Rule 2.10(A) states that “a judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.” In Informal Opinion 90-2, the Committee stated that the prohibition applies to cases pending in any jurisdiction, including the United States Court of Appeals and the U. S. Supreme Court. The Committee stated that a “judge must abstain from public comment except when making public comments in the course of official duties or explaining for public information the procedures of the court.”

The Committee reviewed a press release in which the organization announced that it had filed an amicus brief in a case pending before the United States Supreme Court. The president of the organization specifically commented on the case, criticizing the lower court decision. The brief was certainly filed with the intent to affect the outcome of the case and therefore the president’s statement in connection with the filing is reasonably viewed as expecting to affect the outcome of the case. A judge may not publicly comment about a case pending in the U.S. Supreme Court when the judge is acting in the role of president of a civic organization that is a participant in the proceedings.

### **Political Activity:**

Rule 1.2 and rule 3.1 require judges to act in a manner that does not undermine public confidence in the independence and impartiality of the judiciary. The judiciary is an independent, apolitical branch of government and judges must ensure that they do not engage in activities that undermine public confidence in that independence. Rule 4.1(A)(3) states that a judge shall not “publicly endorse or oppose a candidate for any public office.” The Committee has reviewed two press releases issued by the organization in response to comments made by presidential candidates. The presidential candidates were criticized in both press releases and both press releases included quotes from the president of the organization. In one press release the presidential candidate was identified by name and the candidate’s statements were called offensive and derogatory, as well as dehumanizing and degrading. In another press release the presidential candidate was again mentioned by name and the release stated that the candidate had attacked minority communities and that presidential candidates cannot win without the support of communities of color. The statements can be viewed as opposition to those presidential candidates.

In Informal Opinion 93-1, the Committee was asked whether judges may maintain membership in a professional organization that had begun to endorse candidates for partisan political office. The Committee concluded that “judges may not maintain . . . membership in an organization that endorses candidates for partisan political office, and . . . abstinence from the endorsement process, even coupled with public notice of the abstinence, does not clear the way for continued membership.” The prohibition on maintaining membership in an organization that endorses candidates extends equally to an organization that opposes candidates. The concern is heightened significantly when the judge is not only a member of such an organization, but is the president of the organization and is making the statements. A judge may not make any public statements that can be viewed as opposing or supporting a political candidate.

### **Fundraising:**

In reviewing the organization’s webpage, the Committee also saw a press release related to a fundraiser. The organization conducted a national convention at which a raffle was held. The money raised from the raffle was donated to a local school. The president of the organization announced the fundraiser and discussed the benefits to the recipient. A judge may be the president of an organization that engages in fundraising. However, a judge may not participate in the fundraising. A judge therefore may not issue or be mentioned in a press release announcing a fundraiser and touting the benefits to the recipient.

### **Conclusion:**

The Committee recognizes the importance of judges being involved in community activities. Judges have unique abilities and perspectives to offer. Judges are encouraged to serve. However, judges must remember that the Code of Judicial Conduct regulates conduct off the bench as well as on the bench. Judges must not engage in off-the-bench activities that undermine public confidence in the integrity, impartiality, and independence of the judiciary. Even though judges may serve as officers in civic organizations, judges must be particularly cautious when those organizations are advocacy groups. A group that advertises itself as dedicated to advancing the political well-being of its members should automatically raise concerns for a judge.

In short, a judge may not engage in political activities unless those activities involve the law, the legal system, or the administration of justice. A judge may not publicly comment on statements made by political candidates. A judge may not publicly comment on cases pending in any court. And, a judge may not be president of an organization that engages in those same activities. Judges must help ensure public confidence in an independent and impartial judiciary.