

**Colorado Supreme Court
Judicial Ethics Advisory Board (C.J.E.A.B.)**

**C.J.E.A.B. ADVISORY OPINION 2007-11
(Finalized and effective October 2, 2007)**

ISSUE PRESENTED

The requesting judge, who sits on the district court bench in the larger Denver metropolitan area, has long been interested in both public service and domestic relations. In furtherance of these interests, he is considering seeking an appointment to the Colorado Child Support Commission when a vacancy becomes available. The Commission's function is to review the child support guidelines and recommend changes to the Governor and General Assembly. The judge would later apply these changes to the guidelines, and deviations therefrom, in domestic relations cases assigned to him. The judge notes that the statute governing the Commission provides that the Governor should appoint representatives of the judiciary to the Commission, and that those representatives would serve alongside a member of the Colorado House of Representatives and Senate. The judge has reviewed the board's previous advisory opinions regarding service on governmental commissions in 2006-06 and 2005-04 and states that he is unable to discern whether membership on the Commission meets the "direct nexus" test. May he serve on the Commission?

CONCLUSION

The judge may accept an appointment to the Colorado Child Support Commission.

APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 4 generally encourages a judge to engage in quasi-judicial activities so long as his or her capacity to decide impartially any issue that may come before the judge is not impaired by participation in those activities. Canon 4A encourages a judge to "participate in other activities concerning the law, the legal system, [and] the administration of justice." Canon 4B authorizes a judge to "consult with, or appear at a public hearing before, an executive or legislative body, or an official thereof, on matters concerning the law, the legal system, [and] the administration of justice." Similarly, Canon 4C encourages a judge to "serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, the judicial branch or the administration of justice. . . . A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice."

Canon 5B encourages a judge to participate in civic activities that do not adversely reflect upon the judge's impartiality or interfere with the performance of judicial duties. Subsection (1) cautions, however, that 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.

Canon 5G provides that a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.

DISCUSSION

The tension between the encouragement of Canons 4 and 5B, and the prohibitions of Canons 5B(1) and 5G, has been the focus of several of our advisory opinions, including 2005-04, 2006-06, and, in a companion opinion released today, 2007-10. In that companion opinion, we distinguish our conclusion in 2005-04 that a judge's potential participation in a municipal crime control and prevention commission would be precluded, from our conclusion in 2007-10, in which we determine that a judge is not precluded from participating in a "Justice Coordinating Committee."

As we noted in 2007-10, "[e]very board, committee, and commission is different and must be evaluated carefully by the judge involved to determine whether judicial participation is ethically appropriate." After carefully evaluating the nature of this judge's potential participation on the Colorado Child Support Commission, we conclude that the judge may participate on the commission.

Our analysis is guided by our discussion in 2007-10. For the sake of brevity, and to avoid potential conflict or confusion between 2007-10 and this opinion, our discussion in this companion opinion is abbreviated. This opinion assumes familiarity with and we refer the reader to 2007-10.

We conclude that there is a direct nexus between the work of the commission and the improvement of the law, the legal system, and the administration of justice. The commission's charge—reviewing and recommending changes to the child-support guidelines—is very much part of the work of the judiciary within the meaning of 2005-04's direct-nexus test.

In addition, the request here is distinguishable from the request we considered in 2006-08. There, the requesting judge was asked to lobby and make policy recommendations to the other co-equal branches of government on political matters regarding global climate change outside the expertise and province of the judiciary. By contrast, here the requesting judge is being asked to weigh-in on and consult with the other branches of government on matters with which he has expertise by virtue of his experience as a judge.

Accordingly, the judge's work with the commission in making recommendations to the Governor and legislature is expressly permitted under Canon 4.

The next question thus becomes whether service on the commission would nevertheless call into question the judge's "impartiality, effectiveness, and independence." *See* 2007-09, 2005-04. The service contemplated here does not implicate these ethical concerns. There is nothing about the scope or substance of the commission's work that would call into question the judge's independence or impartiality. In addition, the composition of the commission here, unlike the commission at issue in 2005-04, does not suggest bias towards one side or another; this commission is composed of a cross-section of interested stakeholders from the judiciary, the Colorado Bar Association, the state department of human services, a director of a county department of social services, the child support liaison to the judicial department, a CPA, and parent representatives, as well as a member of the state house and senate and other interested parties. For these reasons, there is no concern that the commission is impermissibly weighted in favor of one group; as the concerns outlined in 2005-04 are not present here, we perceive no obstacle to the judge's serving on the commission.

FINALIZED AND EFFECTIVE by the Colorado Judicial Ethics Advisory Board this 2nd day of October, 2007. Professor James Wallace does not participate in this opinion.