

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

**C.J.E.A.B. ADVISORY OPINION 2006-02
(Finalized and effective February 7, 2006)**

ISSUE PRESENTED

A full-time judge has asked what pro bono legal services she may provide for her local legal services program. The judge notes that the bulk of the program's pro bono work is done by lawyers taking cases, which she recognizes she cannot do, but she asks whether her assisting in the monthly call-a-lawyer night by answering phone calls to the hotline and dispensing advice anonymously to callers would be permissible.

CONCLUSIONS

The judge may not participate in her local legal service's call-a-lawyer program by providing advice to callers, anonymous or otherwise, because doing so would constitute the practice of law. Full-time judges are prohibited from engaging in the practice of law. The judge may, however, engage in activities intended to encourage attorneys to perform pro bono services or act in an advisory capacity to the legal services pro bono program.

APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 5F addresses the practice of law and states that "[e]xcept as provided for in Canon 8 (Applicability) [Part-Time, Senior, and Retired Judges], a judge should not practice law." *See also* COLORADO CONST. Art. VI, § 18.

Nevertheless, Canon 4 encourages judges to engage in quasi-judicial activities to improve the law, the legal system, and the administration of justice. The commentary to Canon 4 provides that "[s]upport of pro bono legal services by members of the bench is ... an activity that relates to the improvement of the administration of justice. Accordingly, a judge may engage in activities intended to encourage attorneys to perform pro bono services, including, but not limited to: participating in events to recognize attorneys who do pro bono work, establishing general procedural or scheduling accommodations for pro bono attorneys as feasible and acting in an advisory capacity to pro bono programs."

DISCUSSION

Full-time judges are prohibited by Canon 5F from engaging in the practice of law. *See also* COLORADO CONST. Art. VI, § 18. Although the Canon does not specify what

constitutes the “practice of law,” the Colorado Supreme Court has addressed the issue and has stated that “one who acts in a representative capacity in protecting, enforcing, or defending the legal rights and duties of another and in counseling, advising and assisting him in connection with these rights and duties is engaged in the practice of law.” *Denver Bar Ass’n v. Public Utilities Commission*, 154 Colo. 273, 391 P.2d 467 (1964). The practice of law is not restricted to those legal activities that result in compensation, and it includes the provision of legal services on a pro bono basis. See Illinois Judicial Ethics Committee Op. 94-2, Texas Committee on Judicial Ethics Op. 283 (2001). Participation in the judge’s local legal service program’s call-a-lawyer night, in which volunteer attorneys apply legal principles and techniques in providing advice to callers, constitutes the practice of law. Accordingly, the judge may not participate in this program by fielding calls and dispensing advice, even if she provides such advice anonymously.

The Board notes, however, that Canon 4 encourages judges to engage in quasi-judicial activities to improve the law, the legal system, and the administration of justice and identifies pro bono work as an activity related to improvement of the administration of justice. The Commentary specifies that a judge may engage in activities intended to encourage attorneys to perform pro bono services, and it allows judges to act in an advisory capacity to pro bono programs. Accordingly, the requesting judge may encourage members of the local bar to take pro bono cases, attend events designed to recognize attorneys who have performed pro bono work, establish procedural and scheduling accommodations for pro bono attorneys, or advise a pro bono legal services program.

This opinion, however, is predicated on the fact that the requesting judge serves on a full-time basis; it does not address the responsibilities of part-time, senior, retired, or appointed judges in regard to pro bono services.

FINALIZED AND EFFECTIVE this 7th day of February, 2006.