

Colorado Supreme Court
Colorado Judicial Ethics Advisory Board (CJEAB)

C.J.E.A.B. Advisory Opinion 2013-01
(Finalized and effective March 28, 2013)

ISSUE PRESENTED:

The requesting judge has been asked to join the board of directors for the Colorado Organization for Victim Assistance (COVA). He was a member of COVA's board and served as the board president before he became a judge, and requested an advisory opinion addressing whether his position as a judge precludes him from accepting COVA's invitation to re-join its board.

COVA is a nonprofit organization whose membership "includes personnel from the criminal justice system, nonprofit organizations providing assistance to victims of crime, survivors of crime, concerned citizens, and members of allied professions (human services, education, mental health, clergy, etc.)."¹ COVA's website describes its mission as follows:

[COVA] is committed to fairness and healing for crime victims, their families and communities through leadership, education, and advocacy. By operating in an inclusive and compassionate manner, COVA creates solutions and positive change. COVA's vision is to be recognized as a national leader in building a collaborative environment where crime victims are given the opportunity to heal and restore balance to their lives.²

According to its website, COVA is involved in the following activities: (1) providing training and technical assistance on the Colorado Victims' Rights Act; (2) providing training to assist member agencies to provide quality services; (3) publishing newsletters and an online statewide directory of victim service providers; (4) monitoring state and federal legislation affecting victims of crime; (5) administering a Victim Services Internship/Mentorship Program to enhance delivery of services to undeserved/underrepresented populations in the Denver metropolitan area; (6) sponsoring the Annual COVA Conference for victim service providers and other interested parties; (7) planning, developing, and hosting a Statewide Victim Assistance Academy to provide base-line training to those new to the field of victim assistance; (8) providing public education to foster a better understanding of victimization; (9) offering a voluntary Victim Advocate Certification Program for Colorado victim advocates; (10) administering a Crime Victim Emergency Fund; and (11) developing a Crisis Response Team available to assist communities statewide.³

¹ <http://www.coloradocrimevictims.org/about-cova.html>.

² <http://www.coloradocrimevictims.org/index.html>.

³ <http://www.coloradocrimevictims.org/about-cova.html>.

The requesting judge indicated that COVA is also “active in shaping state policy and legislation in ways that benefit crime victims.” COVA’s website describes its legislative activities as follows:

COVA strives to raise the understanding of victim issues within the consciousness of policy makers and the general public to a level where all crime victims are viewed with honor and respect and their rights are recognized as an essential element of the criminal justice process. To further these goals, COVA addresses public policy issues both inside and outside the legislative arena. COVA monitors proposed bills and advocates on issues relevant to crime victims and those who serve them on a daily basis. Legislative advocacy involves coalition-building with other victim advocacy groups; assisting members in identifying and implementing ways to educate their communities; and raising legislators’ awareness and knowledge of crime victim issues. COVA also monitors federal initiatives and issues that affect victims’ rights.⁴

CONCLUSION:

The judge may serve on the board of directors of the Colorado Organization for Victim Assistance, provided doing so would not lead to his frequent disqualification or otherwise interfere with his ability to perform his judicial duties. The judge must ensure that his activities as a board member do not undermine his impartiality, give rise to the appearance of impropriety, or violate other provisions of the Code.

APPLICABLE PROVISIONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 3 of the Code of Judicial Conduct requires a judge to “conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.”

Rule 3.1 provides:

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

- (A) participate in activities that will interfere with the proper performance of the judge’s judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;

⁴ <http://www.coloradocrimevictims.org/public-policy.html>.

- (C) participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality;
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.7(A)(6) provides:

Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations . . . concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of . . . civic organizations not conducted for profit, including . . . serving as an officer [or] director . . . of such an organization or entity, unless it is likely that the organization or entity:

- (a) will be engaged in proceedings that would ordinarily come before the judge; or
- (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

DISCUSSION:

Rule 3.7(A)(6) expressly permits judges to serve on boards of civic non-profit organizations that are not engaged in proceedings that would ordinarily come before the judge, the court of which the judge is a member, or any court subject to the appellate jurisdiction of the judge or the court he serves, and provided the judge’s involvement on the board would not violate the limitations on extrajudicial activities set forth in Rule 3.1. Specifically, and as pertinent here, a judge may not serve on an organization’s board of directors if doing so would interfere with the proper performance of the judge’s judicial duties, lead to the judge’s frequent disqualification, undermine the judge’s independence, integrity, or impartiality, or appear to be coercive. C.J.C. Rule 3.1(A) – (D); *see* C.J.C. Rule 3.1, cmt. 1 (“To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities.”); C.J.C. Rule 3.7, cmt. 2 (“[A] judge should consider whether the membership and purposes of the organization, or the nature of the judge’s participation in or association with the organization, would conflict with the judge’s obligation to refrain from activities that reflect adversely upon a judge’s independence, integrity, and impartiality.”).

Several of the Board's previous opinions have recognized that, under Rule 3.7 and similar rules in the pre-2010 Code, judges may ethically serve on boards of civic non-profit organizations. *See* CJEAB Adv. Op. 2012-01 (judge may serve as the chairman of the board of directors of a non-profit organization benefitting senior citizens); CJEAB Adv. Op. 2007-02 (judge may serve on the board of directors of a public charter school in a neighboring judicial district); CJEAB Adv. Op. 2007-03 (judge may serve on a grant-making committee of a community foundation); CJEAB Adv. Op. 2006-06 (judge may serve on the board of an organization devoted to seeking funds to assist defendants in obtaining court-ordered substance abuse treatment).

The requesting judge did not provide information from which we can determine whether COVA or its representatives appear in or advise parties or non-party participants in matters before the judge, the court he serves, or any court over which he or his court has appellate jurisdiction. We assume for purposes of this opinion that COVA and its representatives do not appear in such matters and that, to the extent COVA advisees do, their appearance would not require the judge's disqualification pursuant to C.J.C. 2.11. Based on those assumptions and subject to the limitations in Rule 3.1, we conclude based on Rule 3.7(A)(6) and our previous opinions that the judge may ethically serve on COVA's board of directors. *See* CJEAB Adv. Ops. 2012-01, 2007-02, 2007-03, and 2006-06; *cf.* CJEAB Adv. Op. 2005-03 (judge should not serve on board of directors of his or her homeowners' association where association is large and substantial, operates a sizable budget and maintains significant cash reserves, and is engaged in substantial business-type contacts that might lead to or involve litigation).⁵

We note, however, that COVA trains victim advocates who may or may not appear in court or work with attorneys, non-attorney representatives, witnesses, or others who do, and it is not clear whether board members take an active role in training victim advocates. We also note that according to COVA's website, its board of directors includes two district attorneys from the judge's judicial district and other individuals who could potentially appear in court proceedings, whether as parties, counsel, witnesses, or in another capacity.⁶ Thus, in deciding whether the disqualification-related limitations in Rules 3.1 and 3.7(A)(6) preclude his ethical participation on the board, the judge should consider whether his involvement on the board might lead to potentially disqualifying relationships, and in particular whether his affiliation with other board members might lead to his frequent disqualification in criminal matters.

Moreover, if the judge decides to serve on COVA's board of directors, he must ensure that the activities he engages in as a board member are consistent with other provisions of the Code. Because he did not inquire about any specific proposed activities, we cannot determine the ethical parameters of his activities as a board member in this opinion. We encourage the judge to review our previous opinions for guidance in making that determination, especially

⁵ In so concluding, we note that, while COVA engages in various political activities, it is not a "political organization" as that term is defined in the Code, and that the judge's participation on the board is thus not prohibited by Rule 4.1(A), which provides that judges "shall not . . . act as a leader in, or hold an office in, a political organization." *See* C.J.C. Terminology (defining "political organization" as "a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office").

⁶ <http://www.coloradocrimevictims.org/about-cova.html>.

CJEAB Adv. Op. 2012-05, our most recent opinion regarding the ethical limitations on judicial participation in extrajudicial activities. Although that case involved the permissible scope of a judge's participation on a governmental board under Rule 3.4, not the ethical parameters of a judge's membership on a civic organization's board of directors under Rule 3.7, many of the ethical issues judges must consider in evaluating the propriety of their affiliation with outside organizations, particularly concerns about impartiality and the appearance of impropriety, are the same whether the organizations are governmental or private.

In addition to the considerations highlighted in our previous opinions, the judge should also consider whether COVA's legislative activities, particularly those that do not concern the law, the legal system, or the administration of justice, would be inconsistent with the independence, integrity, or impartiality of the judiciary, *see* C.J.C. Rules 3.1(C) and 3.2, Canon 4, or give the impression that, as a board member, he is lending the prestige of his judicial office to support COVA's legislative objectives. *See* C.J.C. Rules 1.3, 2.4(C), and 3.2, cmts. [1] and [2] ("Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials," but "In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code . . ."); CJEAB Adv. Op. 2007-07 (deciding under pre-2010 Code, that a judge may not accept a voting or non-voting board position on a local community board that combines integrated services and legislative advocacy because such membership would involve legislative advocacy beyond matters to improve the law); CJEAB Adv. Op. 2006-08 (judge should not accept appointment to a panel of public and private leaders charged with "reducing the state's contribution and vulnerability to a changed climate" by developing a set of recommendations and policy proposals addressing how Colorado can mitigate and adapt to climate change; such work would involve consulting with or providing recommendations to the legislative and executive branches on climate control issues, which are unconnected with the law, the legal system, the administration of justice, or the role of the judiciary, and constitutes prohibited political activity).

FINALIZED AND EFFECTIVE this 28th day of March, 2013.