

Colorado Supreme Court
Colorado Judicial Ethics Advisory Board (CJEAB)

C.J.E.A.B. Advisory Opinion 2022-02
(Finalized and effective March 25, 2022)

BACKGROUND:

The requesting judge has been involved with an ad-hoc group of lawyers, law students, professors, judges, paralegals and other staff associated with the legal profession—most of whom have disabilities but some who do not—to discuss plans to establish a formal bar association within the Colorado legal community. The bar association would provide mentorship, educational outreach, and professional development to its members, regardless of disability status, and would be similar to existing bar associations for women, racial minorities, or the LGBTQ+ community. Like most of those organizations, the proposed bar association would conduct activities as a business league consistent with section 501(c)(6) of the Internal Revenue Code.¹

The informal group currently refers to itself as the “Lawyers with Disabilities Group” (“the Group”) and represents the interests of people with disabilities working in the legal profession, legal professionals working in areas of law that affect people with disabilities, clients and community members with disabilities, and other allies. The Group’s mission (and proposed bar association’s mission) is to

- speak on behalf of and advocate for the interests and ideas of members of the legal profession and the legal community;
- increase access to justice for individuals with disabilities;
- foster the exchange of ideas and information related to disability awareness, accommodation, and empowerment through educational programming, open forums, and networking;
- encourage and promote the professional growth of the members of the organization;
- present educational programs aimed at the needs of legal professionals with disabilities and legal professionals who practice in areas of disability-related law;
- provide a vehicle and forum for the expression of opinions and positions by the organization’s members upon current social, legal, or other matters or events of concern to the members of the organization; and

¹ Organizations conducting activities consistent with section 501(c)(6) are typically non-profit business leagues, boards of trade, chambers of commerce, or professional service leagues. Unlike a section 501(c)(3) organization, however, a section 501(c)(6) organization may campaign and engage in politics and lobbying activities to promote the interests of the organization and its members. See John Francis Reilly, et al., *Political Campaign & Lobbying Activities of IRC(c)(4), (c)(5), and (c)(6) Organizations*, Exempt Organizations-Technical Instruction Program FY 2003, IRS Pubs. (2003) L-2, available at [Microsoft Word - L.Political campaign activitiesFINAL.doc \(irs.gov\)](#).

- serve as a communication network to broaden opportunities for legal professionals and law students with disabilities.

As the Group’s intent to establish a formal bar association becomes more concrete, the requesting judge would like to know what level of involvement the judge may have in the bar association without violating the Code of Judicial Conduct (“Code”).

ISSUES PRESENTED:

1. Whether a judge may serve as an officer of or on the board of directors of a bar association for lawyers with disabilities that would be incorporated as a non-profit organization under Colorado law and would conduct activities as a business league consistent with section 501(c)(6) of the Internal Revenue Code.
2. Whether a judge may be a dues-paying member of a bar association for lawyers with disabilities that would be incorporated as a non-profit organization under Colorado law and would conduct activities as a business league consistent with section 501(c)(6) of the Internal Revenue Code.

SUMMARY:

1. The requesting judge may serve as an officer or board member of a bar association for lawyers with disabilities but may not participate in political or campaign efforts.
2. The requesting judge may be a dues-paying member of a bar association for lawyers with disabilities but may not participate in political or campaign efforts.

APPLICABLE PROVISIONS OF THE CODE:

Rule 1.2 provides that “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

Rule 1.3 prohibits a judge from abusing “the prestige of judicial office to advance the personal or economic interests of the judge or others or allow[ing] others to do so.”

Canon 3 requires a judge to conduct personal and extrajudicial activities in a way that minimizes the risk of conflict with the obligations of judicial office. Rule 3.1 governs extrajudicial activities in general and clarifies that “[a] judge may engage in extrajudicial activities, except as prohibited by law or this Code,” but when engaging in such 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;

- (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;
- (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.

The commentary to Rule 3.1 further explains that “[t]o the extent that . . . judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities.” *Id.* cmt. [1]. The rationale is that “[p]articipation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.” C.J.C. Rule 3.1, cmt. [2].

Rule 3.2 prohibits judges from appearing voluntarily at a public hearing before, or otherwise consulting with, an executive or a legislative body or official, except:

- (A) in connection with matters concerning the law, the legal system or the administration of justice; [or]
- (B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge’s judicial duties

Subject to Rule 3.1, Rule 3.7 provides that judges “may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit.” Rule 3.7(A)(6) permits judges to serv[e] as an officer, director, trustee, or nonlegal advisor 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.

ANALYSIS:

The CJEAB has issued several opinions addressing whether a judge may serve on the board of or be affiliated with a non-profit, charitable, or civic organization. Consistent with Rules 3.1 and 3.7, the CJEAB has generally determined a judge may be a member of such an organization or serve on its board as long as service would not adversely affect the judge’s ability to discharge his or her official duties, and the judge would not engage in fundraising or in the organization’s legislative or political activities. *See, e.g.*, C.J.E.A.B. Ad. Op. 2020-01 (Jan. 19, 2020) (judge may serve on the board of a non-profit organization designed to promote women—particularly women of color—to leadership positions); C.J.E.A.B. Ad. Op. 2016-02 (Nov. 14, 2016) (judge may serve on the Board of the Pikes Peak Region of Joint Initiatives for Youth and Families even if the Board engages in legislative advocacy for children as long as his service does not interfere with the judge’s ability to perform judicial duties); C.J.E.A.B. Ad. Op. 2016-01 (Feb. 23, 2016) (judge sitting on the board of cycling charity may write thank-you notes

to acknowledge past donations as long as the judge does not identify as a judicial officer or solicit future donations); C.J.E.A.B. Ad. Op. 2013-01 (judge may serve on board of directors of the Colorado Organization for Victim Assistance, provided doing so will not lead to frequent disqualification and activities as a board member do not undermine the judge’s impartiality or give rise to appearance of impropriety).

Although the CJEAB has considered many instances in which a judge may serve or participate as a member or in a leadership capacity for a non-profit organization, we have not yet considered whether a judge may be a dues-paying member of or have a leadership role in a bar association formed specifically under section 501(c)(6).

Per Rule 3.7—which permits judges to participate in activities sponsored by organizations concerned with the law, legal system, and the administration of justice or hold a board position for such an organization—the requesting judge can be a member or officer of a bar association for lawyers with disabilities. Yet while participation may comply with Rule 3.7, there are other factors the CJEAB must consider, like the lobbying component associated with a 501(c)(6) organization and whether affiliation with a “specialty” bar association may give the appearance of partiality.

A. Political Campaigning and Lobbying Activities

Although the proposed bar association might not engage in politics, campaigning, or lobbying activities, any organization formed under section 501(c)(6) has the authority to engage in those activities. In Advisory Opinion 2016-02, we considered whether a judge could serve on the board of directors of a charity that lobbied for legislation on behalf of children and their families. We concluded that despite the charity’s lobbying efforts, the judge could serve on its board as long as he did not lend the prestige of judicial office to the organization and his participation on the board did not result in his frequent disqualification.

Thus, even if the proposed bar association advocates and lobbies for individuals with disabilities, the requesting judge can still be a dues-paying member and serve on the bar association’s board.²

B. Distinction Between General and “Specialty” Bar Associations

The next issue the CJEAB must consider is the appearance of bias or impropriety that might arise if a judge is a member of or serves on the board of a bar association. The jurisdictions that have considered a judicial official’s affiliation with a bar association distinguish between profession- or geographic-wide bar associations and “specialty” bar associations. Profession- and geographic-wide bar associations are broad and inclusive; their members “reflect all, or many different segments of the bar and represent all sides of various issues confronting the profession.” D.C. Ad. Comm. on Jud. Conduct, Ad. Op. No. 4 (Feb. 22, 1994), 1 n.1. Specialty bar associations, on the other hand, tend to have fewer members and typically fall into one of three categories: they (1) represent a particular class of clients (*e.g.*, plaintiffs or defendants); (2) engage in a specialized practice area (*e.g.*, family law); or (3) reflect a particular group of lawyers (*e.g.*, women or racial minorities). *See id.*

² We caution the requesting judge that Canon 4 still restricts a judge from participating in political and campaign activities: a judge “shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.”

Most jurisdictions generally encourage judges to participate in general state and local bar associations, inns of court, and similar organizations, including serving as officers and board members because the members represent all sides of the legal profession and there is no concern of bias or impropriety. *See, e.g.*, CA Sup. Ct. Comm. on Jud. Eth. Ops. Ad. Op. 47 (Sept. 11, 1997) (it is appropriate and desirable for judges to participate in the professional, educational, and social activities of legal organizations). Judges are, therefore, encouraged to participate in these organizations because doing so fosters an intellectual exchange among judges, lawyers, and academics in the legal community and across legal fields. *See id.*

In contrast, several jurisdictions have advised judges to exercise caution when considering membership or leadership roles in specialty bar associations because those associations could advocate for only one side of an issue, their members might appear frequently before the court, or membership may give the appearance of bias or judicial impropriety. *See, e.g.*, AK Comm. Jud. Cond. Ad. Op. #99-4 (Dec. 14, 1999) (judge could not be a member of the Association of Trial Lawyers because the association advocated for the position of plaintiffs in civil disputes and membership would convey the appearance of a special relationship to one side of the adversarial process); SC Ad. Comm. on Standards of Jud. Con. Ad. Op. 27-1998 (judge could not be a member of the South Carolina Trial Lawyers Association because membership could create a perception of bias by the judge towards that particular organization and its members, as well as lending the prestige of the judiciary to advance the organization's private interests).

The term, “specialty bar association,” as defined by the D.C. Advisory Committee on Judicial Conduct, is far-reaching. As the Committee itself noted, “it is not always clear whether the group can properly be characterized as a bar association or is, more broadly, simply an organization of lawyers for one or more purposes.” D.C. Ad. Op. 4, at 2. For instance, a group of lawyers practicing a specific type of law—like family law—might form a specialty bar, but there is no concern of judicial bias or impropriety if a judge becomes a member or officer because the organization represents all sides of the profession and the association exists to discuss a wide range of issues concerning family law. *See, e.g.*, WI Jud. Conduct Ad. Comm. Ad. Op. 98-10R, p. 6 (Nov. 18, 1998) (section of a bar such as family law does not present problems for a judge because even though it is a specialized bar association, it is made up of lawyers who appear against each other and not lawyers who always represent the same interest such as plaintiffs’ or insurance defense lawyers). Further, as long as a bar association does not discriminate or exclude certain groups of people from its membership, it is not concerning if its members reflect a similar group of attorneys.³

Thus, the real concern with a specialty bar association is not whether the organization focuses on a specific type of law or the composition of its members, but whether the organization is “partisan”—meaning association with the organization would give an appearance of impropriety, convey the impression that the judge could be influenced or appear biased, risk the prestige of judicial office, or erode public confidence in the judiciary. *See* CA Ad. Op. 47, at 2. A

³ *See* C.J.C. Rule 3.6(A) (“A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.”).

partisan lawyer organization is one that represents a specific position on an issue or a specific class of client and “tend[s] to promote causes which operate to the advantage of some and disadvantage of other litigants.” *Id.* Examples of partisan lawyer organizations are those that promote or advocate for “the interests of a limited segment of the bar such as district attorney or public defender organizations, plaintiff or defense-oriented bar associations and similar organizations.” *Id.*; *see, e.g.*, UT Jud. Eth. Ad. Comm. Inf. Op. 01-4 (Aug. 30, 2001) (judge could not receive complimentary judicial fellowship from Association of Trial Lawyers of America because it would give the perception the judge has separated himself from other judges and is aligning with trial lawyers); *see also* AK Ad. Op. #99-4 (judge could not be a member of the Association of Trial Lawyers of America because, as a plaintiff’s bar association, it “promotes itself as leading the fight for the rights of injured persons and engages in lobbying activity against efforts to limit defendant liability”).

The term “partisan lawyer organization” better expresses CJEAB’s concerns of bias and impropriety surrounding judges serving as members of and holding leadership roles in specialty bar associations. The CJEAB is not concerned with judges participating as members and officers of specialty bar associations—like the family law section—or specialty bar associations that promote diversity and foster inclusion within the legal profession—like the Colorado Women’s Bar Association, the Asian Pacific American Bar Association, or the LGBT Bar Association—whose members may appear against each other. Other jurisdictions have similarly determined that “a judge may participate in a bar organization that promotes the interests of particular racial ethnic, or gender groups as long as it does not restrict membership to a particular race, ethnic group, or gender.” *See, e.g.*, CA Ad. Op. 47, at 3. In fact, such participation is encouraged by the Code. *See* C.J.C. Rule 1.2 cmt. [4] (judges should participate in activities that promote ethical conduct among judges and lawyers and support professionalism within the judiciary and the legal profession).

Based on the Group’s mission, potential membership, and intended outreach, any future bar association would likely be considered a specialty bar association, but not a partisan lawyer organization whose members are so specialized that they always represent the same interest. Accordingly, the CJEAB answers both of the requesting judge’s questions in the affirmative: the judge may serve as an officer and be a dues-paying member of a future bar association for lawyers with disabilities. Consistent with the Code, however, the judge should not engage in political or campaign activities or draft amicus curiae briefs on behalf of the bar association. The judge should also be certain not to allow the bar association to abuse the prestige of judicial office to advance the association’s interests.

CONCLUSION:

Subject to the qualifications noted above, the requesting judge may serve as an officer of or on the board of directors of a bar association for lawyers with disabilities. The requesting judge may also be a dues-paying member of the bar association for lawyers with disabilities.

FINALIZED AND EFFECTIVE this 25th day of March, 2022.