

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 94-09
(August 1, 1994)

**Membership on Statutorily
Created Advisory Council**

Issue

May a judge ethically serve as a member of the Advisory Council on Spinal and Head Injuries, or any of its subcommittees, in accordance with A.R.S. § 41-3201(A)(4)?

Answer: No.

Discussion

The Advisory Committee was requested to consider the question at hand in light of Canon 4C(2) of the Code of Judicial Conduct, which reads:

A judge shall not accept appointment to a governmental committee or commission or other governmental 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*. (Emphasis added.)

We interpret the italicized portion of the canon to allow service in a governmental position concerned only with the mechanics of the law, legal system, or administration of justice. Topics falling within this ambit include criminal and civil procedural concerns, court hours, dockets, discipline of judges and attorneys, physical access to courts, etc. It is our opinion that the Advisory Council on Spinal and Head Injuries is primarily devoted to addressing the concerns of persons with spinal and head injuries and preventing further such injuries. Such a purpose does not fall within the narrow confines of the exception to Canon 4C(2). Furthermore, we feel that even if the position on the Advisory Council were a temporary rather than a standing one, it would have to be related strictly to issues pertaining to the law, legal system, or administration of justice. It is inappropriate for a judge to expend time on a public position not closely related to the law.

Service on the Advisory Council on Spinal and Head Injuries is also prohibited by Arizona Constitution Article 6, § 28, which reads:

Justices and judges of courts of record shall not be eligible for any other public employment during their term of office, except that they may assume another judicial office, and upon qualifying therefore, the office formerly held shall become vacant.

We have previously construed this provision in Opinion 88-02. Its effect is to bar judges from holding extrajudicial positions. In Opinion 88-02, Article 6, § 28 was determined to apply to non-compensated positions as well as paid positions.

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The only exception to Article 6, § 28 that we have recognized is discussed in Opinion 90-11. We allowed service on the Governor's Task Force on the Seriously Mentally Ill and Select Commission on Juvenile Corrections because those groups were "established by the Governor and membership on them does not constitute occupying another 'public office.'" We also found service with those groups to fall within the exception of Canon 5G, which is now Canon 4C(2) under the 1993 Code.

The Advisory Council on Spinal and Head Injuries was created by statute (A.R.S. § 41-3201). Each position on the council is a "public office," created by the legislature, not by the Governor. The exception acknowledged in Opinion 90-11 does not apply. Service upon the Council by judges is therefore barred by Article 6, § 28 of the Arizona Constitution.

Thus, we find that a judge may neither ethically, nor constitutionally, serve on the Advisory Council on Spinal and Head Injuries.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 4C(2) (1993).

Other References

Arizona Constitution, Article 6, § 28.

Arizona Revised Statutes, § 41-3201(A)(4).

Arizona Judicial Ethics Advisory Committee, Opinions [88-02](#) (May 11, 1988); [90-11](#) (Dec. 7, 1990).