

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 97-06
(May 28, 1997)

Reconsideration of Opinion 97-03

Facts

The chair of the Supreme Court's Committee on the Impact of Domestic Violence and the Courts has asked us to reconsider our Opinion 97-03. In that opinion, we said that a judge could not serve as a member of the Tucson-Pima County Domestic Violence Commission. The request for reconsideration does not call upon us to evaluate a judge's participation on the requesting judge's committee. Instead, the request is limited to our previous opinion concerning the Tucson-Pima County Commission.

The request, however, raises a new issue not squarely presented before: May a judge's involvement with the commission be limited to avoid unethical conduct? We elect to grant the request so that this additional question may be answered. We also elaborate on our prior decision that unlimited participation on the commission is barred by the Code of Judicial Conduct.

Issues

1. May a judge serve as a member of the Tucson-Pima County Domestic Violence Commission?

Answer: No.

2. May a judge serve as a member if the capacity in which he or she serves is limited?

Answer: No.

Discussion

The Judicial Ethics Advisory Committee tries to keep its opinions brief so that busy judges can read them without undue expenditure of time. However, in hindsight our statement of the facts in Opinion 97-03 may have been incomplete. We supplement that statement here.

The judge-member of the Tucson-Pima County Commission apparently had an abiding concern that his participation was ethically problematic. He ultimately concluded that his participation was improper and so notified his presiding judge, who reached the same conclusion but who also sought the opinion of this committee.

The director of the commission had asked the judge-member to sign a letter which purported to commit the superior court in Pima County and the judge himself "to achieve an environment of zero tolerance reference intimate partner violence." The judge also

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concluded that various documents related to the commission revealed "that the commission's agenda includes attempts to influence law enforcement, prosecutors and the judiciary in their handling of domestic violence cases. Also apparent is the pro-victim mind-set which the commission was created to propound The commission appears to be too agenda-driven and advocacy-oriented for suitable involvement of the judiciary." We also note that, if assigned to a particular committee, the judge would also be expected to engage in fund-raising on behalf of the commission.

Before turning to the issues at hand, the advisory committee notes that the request for reconsideration cites several relevant ethics opinions from other states. We have reviewed each of them. We also studied additional opinions not cited in the request.

It may be helpful to group these opinions as follows. First, a single state has indicated that a judge may, without limitation, be a member of a similar organization. Neb. Op.93-3 (commission for protection of children). Second, one state has indicated that a judge may or may not, depending on the circumstances, participate in a domestic violence task force. *See* Fla. Ops. 95-14, 94-38, 94-33, 94-32. Third, two states have concluded that judges may not participate. Wash. Op.95-4 (community public health and safety committee); W. Va. Inv. Feb. 7, 1997 (domestic violence). Finally, two states believe that the judge may be involved on a carefully limited basis. Utah Informal Op. 94-2 (substance abuse committee); S. C. Op. 8-1996 (children's justice task force); *see also* South Carolina Op. 27-1995 (participation not allowed in child abuse and neglect advisory committee).

Two general observations arise from our study. First, our counterparts in other states are not unanimous on the ethical restraints applicable in this situation. Second, all states but one ban or limit judicial participation in similar organizations.

Issue 1

We now turn to the issues at hand. We have reconsidered our prior opinion that the judge could not participate on an unlimited basis and we now reaffirm it. Judges are expected to treat all who come before them with evenhandedness. They cannot appear to favor victims over accused persons. They cannot seem to give preference to domestic violence cases over other criminal matters. *See* Canon 4A(1). Participation in an advocacy group for domestic violence victims casts doubt on the capacity for unbiased decision making.

Of course, no judge supports criminal activity, including domestic violence. We agree with the request for reconsideration that "[t]he expression of intolerance toward criminal behavior should not disqualify membership on the commission." However, more is involved here than that: The commission's specific agenda and apparent tilt toward crime victims are incompatible with a judge's basic role.

Nor may judges engage in fund-raising, a responsibility of at least some of the members of the Tucson-Pima County Commission. Such activity is flatly prohibited by Canon 4C(4)(b).

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Nor may judges serve on a governmental body other than one solely concerned with "the improvement of the law, the legal system or the administration of justice." Canon 4C(2). The request for reconsideration concurs that the commission is a governmental body. The documents available to us indicate that the commission is involved in matters relating to education, legislation, training, child care and law enforcement as well as issues directly concerning the judiciary. Membership is therefore impermissible. *See* Op. 94-09.

Issue 2

We now consider whether the judge may ethically be a member of the commission on a restricted basis. We note that nothing in the Code of Judicial Conduct prohibits a judge from providing information about the judicial system to such a body or from speaking on subjects relating to the improvement of justice in a forum that the commission might provide. *See* Canon 4B, 4C(1); Op. 96-08 (issues 3 and 4). This can be accomplished, however, without the judge's membership on the commission.

We must answer that the judge cannot participate even on a limited basis. Critical to this conclusion is that the commission is a governmental body. That fact renders Canon 4C(2) applicable. It provides in part:

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.

This provision recognizes "the need to protect the courts from involvement in extra judicial matters that may prove to be controversial." Commentary to Canon 4C(2).

As noted above, the Tucson-Pima County Domestic Violence Commission is involved in several areas of public policy outside the legal system. Accordingly, the judge's participation is forbidden by Canon 4C(2).

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 4A(1), 4B, 4C(1) and (2) and 4C(4)(b) (1993).

Other References

Arizona Judicial Ethics Advisory Committee, Opinions [97-03](#) (March 13, 1997); [94-09](#) (Aug. 1, 1994); [96-08](#) (Aug. 15, 1996).

Florida Committee on Standards of Conduct Governing Judges, Opinions 94-38, 94-33, and 94-32 (1994) and 95-14 (1995).

Nebraska Judicial Ethics Committee Advisory Opinion 93-3 (Sept. 22, 1993).

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South Carolina Advisory Committee on Standards of Judicial Conduct, Opinions 8-1996 (1996); 27-1995 (1995).

Utah Ethics Advisory Committee, Informal Opinion 94-2 (April 26, 1994).

Washington Ethics Advisory Committee, Opinion 95-4 (Jan. 6, 1995).

West Virginia Judicial Investigation Committee, (Inv. Feb. 7, 1997).