

Informal Opinion 16-03

April 27, 2016

Question: A judge has asked whether the judge may serve as a member of the Judicial Advisory Council (“Council”) for the National Juvenile Defender Center (“NJDC”).

Answer: The judge may not serve on the Council.

Discussion: The judge has provided the following description of the Council’s activities:

The NJDC is a nonprofit organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. The NJDC was selected by the John D. and Catherine T. MacArthur Foundation to be one of several Resource Center Partners with the goal of creating developmentally informed juvenile courts. Efforts include collaborations with law enforcement, prosecutors, judges, and other juvenile justice stakeholders to discuss general juvenile justice reform and improvements.

Another effort underway by the Council is the creation of a series of bench cards to be distributed to every juvenile court judge in the country relative to best practices in areas such as appointment of counsel, counsel and trial waiver, etc. NJDC's Bench Card Project is funded by the MacArthur Foundation and the State Justice Institute in partnership with the National Council of Juvenile and Family Court Judges.

While the general focus of NJDC is to be a resource support primarily for juvenile defenders, the Council has a much broader focus and audience. The Council does not advise or direct NJDC in its mission or operations, but rather advises and directs certain projects, like the Bench Card Project mentioned above. The Council is made up of twelve judges from different court levels and from a variety of states such as Colorado, Kansas, Illinois, Massachusetts, Ohio, Louisiana, and Oregon.

Resolution of the question involves several rules in the Code of Judicial Conduct. Rule 3.7 in Canon 3 states that “[s]ubject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system or the administration of justice.” Rule 3.1(C) states that a judge shall not “participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.” The question also involves Rule 1.2 of Canon 1, which states that a “judge should act at all times in a manner that promotes - and shall not undermine - public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.”

The Council appears to address issues involving the law, the legal system, and the administration of justice. However, there is nevertheless a question as to whether participation would undermine, or appear to undermine, the judge's independence or impartiality.

The Committee has issued several opinions that help resolve this question. In [Informal Opinion 98-4](#), the Ethics Advisory Committee addressed whether a judge could serve as a member of the Advisory Board for the Salt Lake County Children's Justice Center. The Committee determined that a judge could serve on the advisory board. There were two critical aspects to the determination. The Committee first noted that "the membership of the board, as designated by statute, consists of professionals throughout the juvenile justice community, including law enforcement, medical professionals, prosecutors and criminal defense attorneys." The fact that the board had a cross-section of juvenile court practitioners was critical.

The second critical aspect was that the board generally had a broad focus on juvenile justice. Although the focus was generally broad, the Committee nevertheless expressed concern "that the Children's Justice Centers are involved in issues outside of the neutral administration of children's justice, focusing instead on successful prosecution of abusers in the adult criminal system." The Committee reviewed the statutory duties of the Children's Justice Centers and noted that the primary purpose of the justice centers was to provide a multi-disciplinary, intergovernmental response to abuse of children. The Committee was troubled, however, by one purpose of the Children's Justice Centers which was to "focus on prosecution of criminal offenders in the adult system." The Committee stated that "a judge cannot assist the prosecutorial role." The Committee recognized that the judge would not be directly participating in the prosecutorial activities of the Children's Justice Center and that the advisory board is "one step removed from the centers themselves." However, the Committee was nevertheless concerned that one of the focuses of the board may in fact be "assisting the centers in devising programs for more effective prosecution." The Committee therefore determined that a judge could serve on the advisory board but could not participate in discussions that "focus primarily on prosecutorial tactics . . . or other discussions that might call into question the judiciary's essential neutrality concerning the administration of the criminal justice system." The judge was permitted to serve on the board because the board was composed of members from across the spectrum of juvenile court practitioners, and because the primary purpose of the centers was a multi-disciplinary approach to child abuse. The judge was not permitted to participate in discussions involving prosecutorial tactics.

The Committee has addressed other circumstances in which the composition of a board, committee, or organization was important. In [Informal Opinion 98-6](#), the Committee determined that a district court judge could serve on a domestic violence coalition as long as the coalition includes "representatives from various agencies and organizations that might be involved with domestic violence, including prosecution, defense, victim assistance and perpetrator assistance." In [Informal Opinion 07-4](#), the Committee determined that a judge may not serve on the Board of the National Alliance for the Mentally Ill (NAMI). The Committee noted that "although NAMI itself is not a frequent litigant before the judge's court, NAMI makes policy decisions that might

have significance for the cases that come before the judge's court." Those opinions make clear that a judge may not be formally connected to an organization that represents only one side of a legal dispute.

Although the composition of the Council is neutral in that it consists only of judges, it is directly tied to an organization that is not neutral. Unlike the Children's Justice Center in [Informal Opinion 98-4](#), the NJDC does not have a multi-disciplinary focus and instead focuses on juvenile defense. Although the NJDC apparently collaborates with others involved in juvenile justice, the NJDC itself is limited to juvenile defense and therefore the Council's direct connection to the organization means that service on the Council is prohibited. If, for example, the Children's Justice Centers had been focused solely on prosecutorial practices, a judge undoubtedly would not have been able to serve on the advisory board, even though the board itself had a cross-section of members.

The Committee recognizes that the judge who requested the opinion stated that the Council "does not advise or direct the NJDC in its mission or operations." The Committee also notes that the current work of the Council will primarily benefit judges. However, the Code of Judicial Conduct is as much concerned with appearances as it is actual violations. The name of the Council suggests that it is an advisory body to the NJDC, even if it is not in fact an advisory body. Also, although the current work of the Council may not favor one side, there is no guarantee that will be the situation in the future, and, again, the fact that this is an entity under the umbrella of the NJDC suggests that the entity will work on issues that benefit the NJDC. By being under the umbrella of the NJDC there is also at least the appearance that the NJDC may have authority to approve or veto the work done by the Council.¹

Just as a "judge cannot assist the prosecutorial role" a judge cannot assist the defense role. Just as a judge cannot be "involved in issues outside of the neutral administration of children's justice, [such as by] focusing . . . on successful prosecution of abusers in the adult criminal system," a judge can not be involved in issues involving the successful defense of juveniles in the system. Although the Council is currently working on a project that does not assist the defense role, by being connected to the NJDC, there may be an appearance that the project will be tilted in favor of defense. The Committee has no doubt that if a judge were asked to sit on an advisory council to a national juvenile prosecutors association there would be little if any debate about whether a judge may serve.

¹ To that end, if the Council separated itself and became an independent, standalone entity and not an "advisory" body, or if the Council were formed by and advised a neutral body such as, for example, the National Council of Juvenile and Family Court Judges, and it dealt only with issues directly involving the law, the legal system, and the administration of justice, there may not be a problem.

The Committee understands and appreciates the collaborative approach that occurs in the juvenile court system. The Committee also understands the importance of ensuring adequate defense of juveniles in the system. However, neither of these overcome a judge's role as the impartial decision-maker. A judge must maintain impartiality in the judge's professional and civic activities. A judge therefore may not sit on the Judicial Advisory Council to the National Juvenile Defenders Association.