

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 08-893

EXTRA-JUDICIAL ACTIVITY: SERVICE ON TASK FORCE TO FIGHT DOMESTIC VIOLENCE AND SEXUAL ASSAULT

ISSUE

May a district judge serve on a task force that is being organized with an emphasis on broad interagency cooperation to combat domestic violence and sexual assault? **Answer:** No.

FACTS

A district judge has been asked to serve on a county “Domestic Violence and Sexual Assault Task Force.” The task force is in its organizational phase, but its purpose, as stated in the invitation to its first meeting to discuss its formation, is the following:

A growing body of experience points to the success of community domestic violence and sexual assault task forces which emphasizes broad interagency cooperation in combating domestic violence and sexual assault. These task forces are successful due to the cooperation and collaboration of law enforcement, medical, local business, religious, media, social services and governmental professionals working in tandem to fight domestic violence and sexual assault.

The judge routinely handles domestic violence misdemeanor cases and protection-from-abuse cases.

DISCUSSION

A judge’s participation in extra-judicial activities is governed by Canon 5, which provides, “A judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.” *See also* Canon 3 (“The judicial activities of a judge take precedence over his other activities.”) Canon 5B provides, “A judge

may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties.” *See also* Canon 1 (“A judge should uphold the integrity and independence of the judiciary.”); Canon 2A (“A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”); Canon 3 (“A judge should perform the duties of his office impartially . . .”).

“A judge’s role is that of a neutral arbiter. The canons, as a whole, recognize the necessity of preserving judicial impartiality in both fact and appearance.” Advisory Opinion 06-871. While it may be permissible for a judge to publicly take a stance against crime, public confidence in the integrity and impartiality of the judiciary is undermined when a judge’s affiliation or participation in civic activities results in an appearance of an identification with one side in cases before the judge, *id.*, or with a particular crime, Advisory Opinion 07-885 (a judge may not recruit male community leaders to publicly denounce domestic violence against women). *See also* Advisory Opinion 00-750 (a circuit judge should not give a speech at a “Take Back the Night” rally that expresses favor and appreciation to those who are proclaiming that they are taking back the nights in the city to make the city safe against sexual assault and will not remain quiet about the issue; such a speech would reflect adversely on the judge’s impartiality in cases involving sexual assaults, given the ambiance of the event and the partisan activities of the event’s sponsoring organization); New York Advisory Opinion 06-108 (attending meetings of a local domestic violence task force that aims to increase offender accountability by promoting and facilitating a coordinated community response of zero tolerance to domestic violence could cast reasonable doubt on the judge’s impartiality). Such appearance of impartiality could require the judge to disqualify himself, which in turn would potentially create interference with the performance of

judicial duties through increased recusals. Advisory Opinion 07-885.

As expressed in the invitation, the single purpose of the task force is to fight domestic violence and sexual assault – a goal that on its face is closely associated with law enforcement and the prosecutorial function, thereby raising a reasonable doubt regarding the judge’s ability to act impartially. Not only must a judge avoid the appearance of favoring victims over accused persons, he must avoid the appearance of giving preference to cases involving certain matters, such as the particular criminal offenses of domestic violence and sexual assault. In addition, a judge’s association with a predominantly law-enforcement and prosecution-oriented entity could well compromise the independence of the judiciary.

Furthermore, a judge must look beyond an organization’s stated objective(s) to its actual activities to determine whether his involvement with it would necessarily create an adverse reflection on his impartiality. Advisory Opinions 06-871 and 02-804. In fact, a judge must be ever mindful of the possibility that changes in the entity’s activities, policies, and associations may create an adverse reflection on his impartiality. Advisory Opinion 02-804. *See also* Commentary, Canon 5B (“The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to re-examine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it.”). Here, however, because the task force has not yet defined its parameters, strategies, policies, and activities, it is impossible for the inquiring judge to fulfill his affirmative duty to learn sufficient information about the task force to better determine whether his participation would violate his ethical responsibilities as a judge.

Joining a task force whose parameters and practices have not yet been defined opens the judge to a plethora of pitfalls as the entity shapes

itself. For example, the judge must avoid associating with a group whose activity encompasses any of the following¹:

Focus on only one gender. Advisory Opinion 07-885 (domestic violence against women).

Use of the prestige of the judicial office to garner support for the organization’s activities and to encourage membership. Advisory Opinion 07-885.

Giving the appearance of the judge’s acting as the organization’s legal advisor on issues that could come before the courts for adjudication. Advisory Opinion 07-885 (providing an employers’ guide to domestic violence in the workplace, which includes the delineation of the employer’s legal responsibilities and sample workplace policies, guidelines, and safety plans – all issues that could arise in litigation).

The promotion of positions on issues the judge would be called upon to decide. Advisory Opinion 02-804 (the board of Alabama Foster and Adoptive Parents Association).

Involvement in the investigation and prosecution of crimes. Advisory Opinion 87-293 (child advocacy center board of directors).

¹ This list is certainly not exhaustive. Because the Commission may provide advisory opinions concerning only whether certain specific actions proposed or contemplated by a judge may constitute a violation of the canons, Rule 17, Rules of Procedure of Judicial Inquiry Commission, the Commission is not authorized to issue broad guidelines on general topics. Moreover, as noted in Advisory Opinion 95-577, it would be impossible to predict and address all of the possible factual situations which might arise.

Giving the appearance of advocating for the rights of a party or providing support for a party in court cases. Advisory Opinions 07-885 (an advocacy organization for domestic violence victims); 02-804 (board director of the Alabama Foster and Adoptive Parents Association).

See, e.g., Arizona Advisory Opinion 97-06 (although a domestic violence commission's expression of intolerance toward criminal behavior should not disqualify membership on the commission, a judge may not be a member where the commission is agenda-driven and advocacy-oriented). *Cf.* Advisory Opinion 98-691 (service on Alabama Model Code on Domestic Violence Project Committee, to recommend improvements in Alabama laws to bring those laws into better conformity with the Model Code, is permissible if the participation does not interfere with the proper performance of judicial duties or create doubt on the judge's capacity to decide impartially any issue before him); Advisory Opinion 87-294 (diversity of the task force on victims and victims' rights, which included members of the criminal defense bar, and the fact that the task force was designated to protect the rights of the accused while also evaluating current laws and efforts relating to victims and victims' rights negate the perception that the task force was fundamentally an advocacy group for a particular single interest); New York Advisory Opinion 95-34 (a judge may participate in a domestic violence task force that is comprised of members of both law enforcement and public defenders and focuses on the manner in which cases are handled rather than on the prosecution of such cases or advocacy on behalf of the victims of domestic violence who are involved in court matters).

As noted in Advisory Opinion 07-885, the goal of ending domestic violence is laudable and the organizations that are striving toward that goal are exemplary. Certainly, the same applies to the goal of combating domestic violence and sexual assault. Although the Commission fully appreciates that a judge's participation could

serve his community, "[t]he judicial activities of a judge take precedence over his other activities." Canon 3. A judge must make every effort to avoid giving the appearance of a predisposition in matters that are likely to come before him and of alignment with an advocacy organization and to avoid participation in activities or matters that may otherwise cause his disqualification. Advisory Opinions 06-871.

Based on the stated general goal of the task force, the Commission advises that the judge's participation in or affiliation with the proposed task force would create an adverse reflection on his impartiality. The Commission notes that nothing in the canons prohibits a judge from providing information about the judicial system or speaking on topics relating to the improvement of the law, the legal system, and the administration of justice, Canon 4. This may be accomplished however without the judge's membership on the task force.

REFERENCES

Alabama Canons of Judicial Ethics, Canons 1, 2A, 3, 4, 5, and 5B, and Commentary, Canon 5B.

Rules of Procedure of Judicial Inquiry Commission, Rule 17.

Alabama Advisory Opinions 07-885, 06-871, 02-804, 00-750, 98-691, 95-577, 87-294, 87-293.

Arizona Advisory Opinion 97-06.

New York Advisory Opinions 06-108 & 95-34.

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17, Rules of Procedure of the Judicial Inquiry Commission. For further information, contact the Judicial Inquiry Commission, P.O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089.