

Wyoming Supreme Court Judicial Ethics Advisory Committee
Advisory Opinion 2012-02

This opinion is in response to an inquiry regarding whether a judge could serve on the board of directors of two non-profit organizations.

Factual Background

The Judge has been asked to serve on the board of two non-profit organizations. The first organization is described by the Judge as follows:

The (omitted) Institute advances the understanding and resolution of complex environmental and natural resources challenges and supports stockholder-driven solutions to environmental challenges by communicating relevant research and promoting collaborative decision making.

The second board of director activity relates to an organization for women that is:

[H]osting a one shot antelope hunt for women in Wyoming. The charitable intent of the event is to raise awareness about economic self-sufficiency issues for women in Wyoming as well as provide funds to support organizations addressing these issues. The event itself will create opportunities, encourage, educate, and mentor women's responsible participation in the recreational shooting and hunting sports, proud Wyoming traditions.

Response

In general, service on these boards would not violate the Code of Judicial Conduct as long as the specific function of the judge as a board member did not conflict with any of the limitations contained in Rule 3.7 of the Code.

Rational and Discussion

The Judge did not specify the duties of a board member for either organization. The Committee, therefore, cannot address whether specific duties of a board member of the two organizations might come in conflict with the code.

Rule 3.1 of the Code permits extra judicial activities so long as those activities:

- A) Don't interfere with the proper performance of the judge's judicial duties;
- B) Don't lead to frequent disqualifications of the judge;

- C) Don't undermine the judge's independence, integrity, or impartiality;
- D) Don't lead to coercive conduct; or
- E) Don't use court resources.

The Committee does not believe that Rule 3.1 or any subpart, thereof, would disqualify the judge from serving on the respective Board of Directors based on the description of the organizations.

Rule 3.7 of the Code of Judicial Conduct states in part:

- (A) A judge may participate in activities...sponsored by or on behalf of educational,...., charitable, fraternal, or civic organizations, not conducted for profit, including the following activities:
 - (1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;
 - (2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;
 - (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objective of the organization or entity, but only if the organization or entity is concerned with the law, the legal system or the administration of justice;
 - (4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;
 - (5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and
 - (6) serving as an officer, director, trustee, or non-legal 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.

The Committee is of the opinion that Rule 3.7 would permit service on either Board of Directors as long as the Judge's activities did not go beyond any of the limitations in sub-parts (1)-(6).

Since the Committee does not know what tasks the Judge may be expected to perform, the Judge must determine whether any of the duties of a board member conflict with Rule 3.7. The Committee would, however, note that sub-part (5) of Rule 3.7 severely limits the ability of a judge to make recommendations to a non-profit, public, or private, fund granting organization in connection with the programs and activities of that organization. Further, all of the comments to Rule 3.7 provide helpful guidance.

Finally, the Committee would take note of Rule 3.6 which prohibits a judge from holding membership in any organization that practices invidious discrimination.

Since one of the organizations the Judge has been asked to serve on is an organization that appears to be solely for women, the Committee believes that we should comment on the meaning of invidious discrimination. The Committee is of the opinion that organizations, constituted for a specific gender, religion, national origin, or some other classification are not, defacto, practicing invidious discrimination.

To the contrary, invidious discrimination by definition requires discrimination for an improper purpose.

Comment (2) to Rule 3.6 touches on what may be invidious discrimination. The Committee is of the opinion that invidious discrimination involves a malicious intent to discriminate that is without any rational basis or purpose other than to exclude.

The Committee has no reason to believe that the women's organization at issue engages in invidious discrimination and we are of the opinion that the Judge's service on that Board would be proper.

Conclusion

The Committee concludes that there is no reason we are aware of that would prohibit the Judge's service on either organization's Board of Directors. The Committee believes that such service would be a proper extra judicial activity. However, the Judge's specific duties and activities as a board member are not known to this

Committee. Therefore, the Judge needs to make proper inquiry to determine whether Rule 3.7 and its subparts may be in conflict with a board member's responsibilities.

Finally, we conclude that Rule 3.6 only pertains to invidious discrimination and appears not to be applicable in this instance.

FINALIZED AND EFFECTIVE this 11th day of October, 2012 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.