

## **VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 27<sup>th</sup> day of July, 2017.*

On May 13, 2017, came the Judicial Ethics Advisory Committee and presented to the Court Opinion 17-1 pursuant to its authority established in this Court's order of October 20, 2015. Upon consideration whereof, the Court approves the opinion as set out below.

### **Judicial Ethics Advisory Committee Opinion 17-1**

**A judge may serve and participate in an honorary capacity during a festival and related events sponsored by a community-based non-profit organization, subject to restrictions imposed by the Canons of Judicial Conduct.**

#### **ISSUE:**

Is it a violation of the Canons of Judicial Conduct for a judge to serve and participate in an honorary capacity during a festival and related events sponsored by a community-based non-profit organization?

**Answer:** No. Serving and participating in an honorary capacity during a festival and related events (the “Festival”) sponsored by a community-based non-profit organization (the “Organization”) does not, in and of itself, violate the Canons of Judicial Conduct for the Commonwealth of Virginia (the “Canons”) under the facts presented. The judge’s service and participation are, however, subject to restrictions imposed by the Canons. The judge must be attentive to any changes in fact or circumstances that may necessitate modifications to the judge’s service and participation in the Festival.

#### **FACTS:**

A judge has been selected as one of several local residents to serve in a significant “Honorary Position” for the Festival. The judge has asked whether serving in this Honorary Position would violate the Canons.

The Festival is sponsored and produced by the Organization, which focuses on and promotes “public service and ceremony.” The Festival events include a series of artistic, cultural, athletic, culinary, and social events, culminating in a large, community-wide celebratory event. The judge is not an officer, director, or employee of the Organization, nor does the judge serve in any other leadership position. The Organization does not lobby and does not have any political involvement. The judge has no financial interest in either the Organization or the Festival. Additionally, the judge is not an officer, director, or leader of any corporate sponsor of the Festival.

The judge's role in the Honorary Position would be ceremonial, requiring the judge to attend social and community events throughout the year as a representative of the Festival and as an "ambassador" for the locality. Most of the events are social outings. The community-based events at which the judge would serve in the Honorary Position include attending local Special Olympics, meeting with Gold Star families,\* and participating in the final community-wide event. The judge would not ride on parade floats as part of any of the events.

The judge would not have formal or official meetings with politicians, local government officials, or members of the General Assembly. The judge would not raise funds or allow the judge's name and title to be used for any fundraising purposes. The judge would not allow the judge's name or position to be used in any way to promote the Festival or to suggest that the Festival has any connection to the judiciary. The judge does not anticipate that any members of the Organization or sponsors of Festival events would appear in the judge's court. The Organization's leaders have indicated that they are willing to accommodate the judge in any way necessary to assure that the judge complies with the Canons.

## **DISCUSSION:**

In matters involving judges' extra-judicial and charitable activities, the Canons recognize that "[c]omplete separation of a judge from extra judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives." Canon 4A, Commentary. "Judges are encouraged to be involved in community activities so long as the judge does not participate in the solicitation of funds and the prestige of the office is not used for fund raising." Canon 4D(3)(b), Commentary.

Judges are not required to sequester themselves from being active in, and contributing to, the communities in which they live and serve:

It is frequently said that impartial judges should be neutral and detached, but this does not mean that judges have to isolate themselves, devoid of contact with the community at large. There are boundaries that must be respected, but judges should be free to lead normal lives. Upon assuming office, judges should not be expected to give up all of their outside activities. Judges, after all, are human beings entitled to a life of their own. Moreover, to place judges in a monastery or an ivory tower would diminish their judicial ability. Judges need to keep in touch with the outside world. Involvement in the outside world enriches the judicial temperament and enhances a judge's ability to make difficult decisions. As Justice Holmes once said: "[T]he life of the law has not been logic: it has been experience."

CHARLES GARDNER GEYH, ET AL., JUDICIAL CONDUCT AND ETHICS § 1.02 at 1-3 (5th ed. 2013).

Based on the facts that the judge presented to this Committee, it is not a violation of the Canons for the judge to serve in the Honorary Position in the Festival, although the Canons restrict the nature and extent of the judge's participation. The facts demonstrate the judge's awareness of, and intention to comply with, the restrictions imposed by the Canons. Since the Festival is an ongoing series of events, the judge must always be aware that changed or unanticipated circumstances could impact the ongoing propriety of the judge's service in the Honorary Position during the Festival.

## 1. Applicable Canons

Under Canon 2, the judge must avoid the appearance of impropriety. The judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 2A. "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." Canon 2B.

Under Canon 3, "[a] judge shall perform the duties of judicial office impartially and diligently." If the judge's impartiality might reasonably be questioned, recusal may be required under Canon 3E(1).

Canon 4 governs the judge's extra-judicial activities. Under Canon 4A:

A judge shall conduct all of the judge's extra judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

In considering a judge's participation in civic and charitable events, concerns often arise about fundraising and membership solicitation. Under Canon 4D(3)(b)(i), a judge "shall not personally participate in the solicitation of funds . . ." A judge "shall not use or permit the use of the prestige of judicial office for fund raising or membership solicitation." Canon 4D(3)(b)(iv). A judge "shall not be a speaker or guest of honor at an organization's fund raising events unless the events concern raising funds for improving access to the legal system for indigent or low income individuals, but may attend such events." Canon 4D(3)(b)(v).

## 2. Analysis

Under Canons 2, 2A, and 2B, the judge's serving in the Honorary Position, in and of itself, does not create an appearance of impropriety or undermine confidence in the integrity and impartiality of the judiciary. The judge, however, must evaluate whether serving in the Honorary Position in each specific Festival activity is permitted.

The judge may serve in the Honorary Position as long as the judge assures that his or her participation will comply with the requirements of Canons 2, 2A, and 2B.

The judge does not anticipate the appearance of parties or witnesses affiliated with the Organization, the Festival, or the sponsors in the judge's court. If such appearances should occur, then under Canon 3E(1) the judge must decide whether a question reasonably could exist regarding the judge's fairness and impartiality that would require the judge's recusal. *See generally* Canon 3E, Va. JEAC Op. 16-1 (2016), Va. JEAC Op. 01-8 (2001).

The judge's serving in the Honorary Position, in and of itself, does not violate Canons 4A(1), (2), or (3). However, the judge must evaluate each specific Festival activity or event to determine whether the judge's participation in an activity, or attendance at an event, will comply with those Canon provisions.

Under the facts presented to this Committee, the judge will not solicit funds nor allow the judge's name or title to be used in soliciting funds, or in promoting any events. Under Canon 4D(3)(b)(iv), the prohibition against using the prestige of judicial office for fund-raising or membership solicitation not only includes use of the judge's name and title; it also could include the use of the judge's image, or the judge's presence at an event, depending on the context. The judge must be diligent about the application of Canon 4D(3)(b) when the judge attends any event in the role of the Honorary Position.

Therefore, the judge may serve in the Honorary Position and participate in the Festival as long as the judge complies with the requirements of Canon 3 and Canon 4, including but not limited to Canons 4A and 4D(3)(b).

Advisory opinions from other states have recognized that judges can participate in leadership and/or honorary positions for civic and charitable organizations and events, so long as the judges also comply with any restrictions imposed by their states' Canons of Judicial Conduct. For example, Fla. JEAC Op. 2002-17 (2002) determined that a judge could assume the presidency of a non-profit civic organization which provided cultural events, benefited the community through various outreach programs, and was billed as Florida's largest music, art and waterfront festival. *See also* Fla. JEAC Op. 2013-17 (2013) (judge can participate in a local cook-off competition being held at a Jamaican Jerk Festival "as a means of community outreach and levity. . .").

In Mo. Comm'n Retirement, Removal, and Discipline Op. 113 (1985), a judge was permitted to serve as a member or officer of a committee organized for multiple purposes commemorating and promoting the historical significance of the USS Missouri. The judge was cautioned to avoid giving legal advice to the committee, or using his name in fundraising.

In Del. JEAC Op. 1996-2 (1996), a judge and his wife were allowed to serve as honorary chairs of the 250th anniversary of a school which would be running a concurrent capital campaign. The celebratory events in which the judge would participate were separate and distinct from the capital campaign. The judge's participation would not reflect adversely on his impartiality, nor would it interfere with performance of the judge's judicial duties. The school was unlikely to be a regular litigant before the judge; and there was a sufficient separation between the celebratory events and the capital campaign.

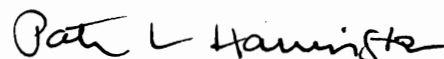
Therefore, participation in an honorary role in community events such as the one before the Committee is permissible within the restrictions imposed by the Canons.

## **CONCLUSION**

The facts presented to the Committee describe an opportunity for a judge to participate in, and give back to, the community in which the judge lives and serves. As long as such activities are consistent with the Canons, judges are free – and in fact encouraged – to serve and participate in their communities through civic and charitable involvement.

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Clerk

## **REFERENCES:**

Canons of Judicial Conduct for the Commonwealth of Virginia, Canon 2, Canon 2A, Canon 2B, Canon 3E, Canon 4, Canon 4A, Canon 4D, Canon 4E.

CHARLES GARDNER GEYH, ET AL., JUDICIAL CONDUCT AND ETHICS § 1.02 at 1-3 (5th ed. 2013).

Va. JEAC Op. 16-1 (2016).

Va. JEAC Op. 01-8 (2001).

Fla. JEAC Op. 2013-17 (2013).

Fla. JEAC Op. 2002-17 (2002).

Mo. Comm'n. Retirement, Removal, and Discipline Op. 113 (1985).

Del. JEAC Op. 1996-2 (1996).

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## **FOOTNOTE:**

· Gold Star families are immediate relatives of members of the United States Armed Forces who have been killed in combat or in support of military activities.

**AUTHORITY:**

*The Judicial Ethics Advisory Committee is established to render advisory opinions concerning the compliance of proposed future conduct with the Canons of Judicial Conduct . . . A request for an advisory opinion may be made by any judge or any person whose conduct is subject to the Canons of Judicial Conduct. The Judicial Inquiry and Review Commission and the Supreme Court of Virginia may, in their discretion, consider compliance with an advisory opinion by the requesting individual to be a good faith effort to comply with the Canons of Judicial Conduct provided that compliance with an opinion issued to one judge shall not be considered evidence of good faith of another judge unless the underlying facts are substantially the same. Order of the Supreme Court of Virginia entered October 20, 2015.*