

Opinions from the Advisory Committee on Judicial Ethics

The Advisory Committee on Judicial ethics (www.nycourts.gov/ip/acje) responds to written inquiries from New York State's full- and part-time judges, candidates for elective judicial office, and quasi-judicial officials such as support magistrates, court attorney-referees, and judicial hearing officers. The committee's opinions interpret the Rules Governing Judicial Conduct (22 NYCRR Part 100), the Code of Judicial Conduct and Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36). Justice George D. Marlow chairs the committee of 26 judges, and Maryrita Dobiela, Esq. is its Chief Counsel.

Opinion 08-105

June 6, 2008

Digest: A full-time judge may permit his/her law clerk to serve on a local municipality's ethics board.

Rules: 22 NYCRR Part 50; 100.2; 100.2(A); 100.3(C)(2); 100.3(E); 100.5(C); Opinions 06-132; 06-09; 02-43; 01-35 (Vol. XX); 00-108 (Vol. XIX); 99-10 (Vol. XVII); Joint Opinion 97-104/ 97-105 (Vol. XVI); Opinion 97-17 (Vol. XV); 94-34 (Vol. XII).

Opinion:

A full-time judge asks whether he/she may permit his/her law clerk to serve on a local municipality's ethics board. The mayor appoints the board members, subject to the Common Council's confirmation. membership is voluntary and uncompensated, and the municipality's corporation counsel serves as the board's counsel. The ethics board issues advisory opinions to elected officials, employees and members of other municipal boards and agencies on issues of conflicts, gifts, and procedure. The board also regularly reviews financial disclosure statements filed with the municipality, and has investigatory power to review complaints and to bring charges, if warranted.

A judge must avoid impropriety and the appearance of impropriety in all of the judge's activities (see 22 NYCRR 100.2) and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (see 22 NYCRR 100.2[A]). A judge also must require his/her staff to observe the standards of fidelity and diligence that apply to the judge (see 22 NYCRR 100.3[C][2]). Nevertheless, the limitations on the extrajudicial conduct of a judge do not automatically apply to the judge's law clerk (see Opinion 00-108 [Vol. XIX]; 97-17 [Vol. XV]; cf. 22 NYCRR 100.5[C] [specifically imposing certain restrictions on personal appointees of a judge]).

The Committee previously has advised that a law clerk may serve on a town council (see Opinion 01-35 [Vol. XX]; as a "co-zone" leader of a political party (see Opinion 00-108 [Vol. XIX]), on a public school board (see Opinion 99-10 [Vol. XVII]; on a parochial school board (see Joint Opinion 97-104/97-105 [Vol. XVI]), and even engage in fund-raising activities for a not-for-profit organization (see Opinion 97-17 [Vol. XV]).

As a member of a local municipality's ethics board, the judge's law clerk in the present inquiry will serve in an advisory capacity, and in an investigatory and prosecutorial capacity as well. Although the Committee previously has advised that neither a judge nor a quasi-judicial official should serve on an ethics board with investigatory and prosecutorial powers (see Opinions 06-09; 02-43; cf. Opinion 06-132 [judge may serve on a municipality's ethics board where board's sole authority is to issue advisory opinions and propose revisions to municipality's ethics code]), the Committee sees no reason to similarly prohibit a law clerk from serving on such an ethics board.

It is the Committee's view, therefore, that the inquiring judge's law clerk may serve on the local municipality's ethics board. In the event that the ethics board is involved in a case that comes before the inquiring judge, however, the judge should insulate the law clerk from the case and disclose both the law clerk's board membership and his/her insulation from the case (see Opinion 94-34 [Vol. XII]). Thereafter, the judge need only recuse him/herself if the judge believes that he/she cannot be fair and impartial (see 22 NYCRR 100.3[E]).

The extrajudicial activities of law clerks and other non-judicial personnel also are subject to the Chief Judge's rules governing Conduct of non-judicial Court employees (see 22 NYCRR Part 50). Therefore, if the judge's law clerk has not already done so, he/she may wish to contact the Unified Court System's Office of Court Administration for guidance as to any issues that may arise under such rules (Contact: ETHICS HELPLINE: 1-888-28-ETHIC).