

FLORIDA SUPREME COURT

Opinion Number: 99-21

Date of Issue: August 25, 1999

WHETHER A JUDGE MAY PARTICIPATE IN PARTNERS IN CRISIS, A GROUP ORGANIZED TO LOBBY THE LEGISLATURE TO INCREASE FUNDING FOR MENTAL HEALTH AND SUBSTANCE ABUSE TREATMENT?

ISSUE

Whether a judge may participate in Partners in Crisis, a group organized to lobby the legislature to increase funding for mental health and substance abuse treatment?

ANSWER: YES.

Whether a judge may lobby the Legislature to increase salaries for judicial employees?

ANSWER: YES.

Whether a judge may participate, directly or indirectly, in lobbying the Legislature for funding various social and/or judicial programs?

ANSWER: The Committee declines to answer, as this question needs to be more fact specific.

FACTS

The inquiring judge has been asked by the chief judge of another circuit to become involved in an organization called Partners In Crisis. This group consists of judges, government officials, state attorneys, public defenders, law enforcement agencies, etc., who share a concern that Florida funds below the national average for mental health and substance abuse treatment. Partners In Crisis has launched a unified lobbying strategy to convince legislators to increase funding for these services. The inquiring judge asks to what extent can judges participate, directly or indirectly, in lobbying the Legislature for funding various social and/or judicial programs? The judge also asks whether a judge may

be a member of or participate in an organization whose purpose for being is to lobby the Legislature to increase funding for substance abuse programs, mental health programs, or increases in salary for judicial employees.

DISCUSSION

A judge is permitted to "speak, write, lecture, teach and participate in other quasi-judicial activities concerning the law, the legal system, and the administration of justice, subject to the requirements of this Code." Canon 4B. The commentary following that provision states, in part:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law.

The Committee has previously found that a judge could serve on certain boards that are law related and that lobby for legislative changes. (See: Opinion 94-31, permissible for a judge to serve on the District Juvenile Justice Board and associated local councils which planned to lobby for legislative changes; Opinion 88-24, permissible for a judge to serve on HRS Alcohol, Drug Abuse and Mental Health Planning Council; Opinion 88-30, permissible for a judge to serve on HRS District IV Planning Council; Opinion 92-11, permissible for a judge to serve on Children's Service Council, and Opinion 94-04, permissible for a judge to serve on HRS Juvenile Detention Center's Community Advisory Board.)

In Opinion 94-31 the Committee cautioned the judge:

" Because the activities of the District Juvenile Justice Board and local councils are law related, the Committee believes the {sic} you should be able to continue to serve, at least as a member pursuant to Canon 4C. Of course, you may have to abstain on certain votes that involve conflict of interest issues and you should not personally solicit funds as proscribed by Canon 5B(2)."¹

Canon 4C permits a judge to appear at a public hearing or otherwise consult with, an executive or legislative board or official on matters concerning the law, the legal system, or the administration of justice. Consequently if a judge is sitting on a permissible Canon 4C board, then it is also permissible for that judge to remain on that Board if the Board is lobbying for legislative changes that concern the law, the legal system, or the administration of justice.

The Committee has rendered several opinions on what direct lobbying a judge may engage. In 98-13 the Committee, relying on Canon 4B, stated that a judge could submit proposed legislation to members of the legislature that would increase the maximum periods of incarceration and probation for guilty defendants in domestic violence cases, and/or discuss proposed statutory amendments that would accomplish those ends. The Opinion however cautioned the judge to make sure that the proposed conduct did 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. Canon 4A.

In Opinion 75-14 the Committee found that a judicial officer could communicate with members of the Legislature on the appropriation and disbursement of funds deemed necessary to operate and finance the court system.

The Committee has previously found that a judge may ethically communicate with a legislator on behalf of judicial assistants relative to salary increases, in Opinion 88-22. In that Opinion, the Committee determined that support of judicial assistants in their effort to achieve salary increases is not prohibited. It was the Committee's view that aiding in the accomplishment of salary increases may well serve the judicial system because of a likely improvement in the quality of applicants seeking employment.

The inquiring judge states in his/her letter to the Committee that he/she had been requested by a chief judge in another circuit to become involved in the organization Partners In Crisis. The inquiring judge further states that the questions are posed to the Committee "Because of my discomfort with lobbying by judges in any form..." This Committee attempts to set the beginning point as to what is permissible or impermissible conduct, i.e. the floor of permissible conduct. However each judge must decide for himself or herself if the proposed conduct is ethical or not for that particular judge. Certainly judges want to cooperate with their fellow judges when asked to do something, but no judge should engage in any conduct which for no other reason simply makes that judge "ethically uncomfortable."

One of the Committee members felt that the preceding language should be redacted from this opinion stating: "While I am not certain what the term 'ethically uncomfortable' means, a judge may engage in permissible (sic) ethical conduct even though the judge may feel uncomfortable about it."

In conclusion, a judge may participate in Partners in Crisis, a group organized to lobby the legislature for funding substance abuse programs and mental health programs. A judge may directly lobby the legislature on matters concerning the administration of justice including increasing the salary for judicial employees.

The Committee however, cannot answer the inquiring judge's general question regarding whether a judge could be a member of an organization whose purpose is to lobby the legislature to increase funding for substance abuse programs, mental health programs, or increases in judicial employees' salaries. The inquiring judge will need to submit more details about the organization(s). In the same vein the Committee is unable to answer the inquiring judge's question regarding to what extent may judges participate, directly or indirectly, in lobbying the legislature for funding various social and/or judicial programs. The committee answers only very fact specific questions.

Finally, no judge should engage in conduct that the judge is uncomfortable engaging in even if this Committee finds the conduct is ethically permissible.

REFERENCES

Florida Code of Judicial Conduct Canons 4A, 4B, 4C, 5C(3)(b)(iii) and Commentary to Canon 4B.

Florida Judicial Ethics Advisory Committee Opinions: 98-13, 94-04, 94-31, 92-11, 88-30, 88-24, 88-22, and 75-14.

The Judicial Ethics Advisory Committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate. Its opinions are advisory to the inquiring party, to the Judicial Qualifications Commission and to the judiciary at large. Conduct that is consistent with an advisory opinion issued by the Committee may be evidence of good faith on the part of the judge, but the Judicial Qualifications Commission is not bound by the interpretive opinions by the Committee. *Petition of the Committee on Standards of Conduct Governing Judges*, 698 So.2d 834 (Fla. 1997). However, in reviewing the recommendations of the Judicial Qualification Commission for discipline, the Florida Supreme Court will consider conduct in accordance with a Committee opinion as evidence of good faith. *Id.*

For further information, contact The Honorable Lisa D. Kahn, Chair, Judicial Ethics Advisory Committee, Harry T. and Harriette V. Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, Florida, 32940-8006.

Participating Members: Judges Cardonne, C. Kahn, L. Kahn, Patterson, Rodriquez, Silverman, Smith, Swartz and Attorney Blanton.

Copies furnished to:

Justice Peggy Quince

All Committee Members

All Members of the J.Q.C.

Office of the State Courts Administrator (Name of inquiring judge deleted from this copy)

¹ Canon 5B2 has been renumbered as Canon 5C(3)(b)(iii).