

Canon 4

Extra-judicial Conduct

Jennifer Juhler and Judge Mark Cady

Iowa State Court Administrator's Office and Iowa Supreme Court

Not dated

Ms. Juhler and Judge Cady submit for the Commission's consideration an article entitled, "Morality, Decision-making and Judicial Ethics," that addresses the interplay of judicial ethics and controversial, polarizing issues exemplified by domestic violence. They describe the role of judges in coalitions that deal with complex social issues and recommend processes to encourage judicial participation in educational programs and community groups working on complex social issues. Ms. Juhler and Judge Cady also recommend black-letter and comment for the Model Code of Judicial Conduct through incorporation of which the Commission can encourage judicial participation in such groups.

- **The Role of Judges in Coalitions**

Ms. Juhler and Judge Cady observe that judicial involvement in domestic violence coalitions (or coordinating councils) has generated a significant amount of controversy. While some judges embrace roles because of the opportunity to improve the system and achieve personal and professional fulfillment, others regard involvement in a coalition as inherently problematic believing that participation creates the appearance of impropriety, that the controversial and polarizing nature of the topic will taint the judge, that the judge may become biased, and that the judge will have to seek recusal from any future case involving domestic violence.

Domestic violence coalitions often serve multiple purposes some of which may include improving the legal response; educating the public; recommending legislative changes; increasing community awareness of resources; securing funding for multi-disciplinary efforts; and contributing to public debate through the media. While some of these activities may be appropriate for judges, others are not. Ms. Juhler and Judge Cady discuss issues that arise where judges participate in community groups that deal with complex social issues and distinguish acceptable activities from those that run afoul of ethical rules.

► **Advocacy:** A judge's advocacy for an outcome is not permissible; advocacy for the efficient administration of justice is permissible.

► **Education:** Judges should take the time to work as liaisons to community groups that address working on complex social issues to benefit the community and to improve the administration of justice. Such service represents an opportunity for judges to educate community members about the role and function of the judiciary and special ethical issues that can limit judicial participation.

- **Bias:** Judges should avoid situations that affect and take steps to reduce both the appearance of bias and the likelihood of bias influencing decision-making. One mechanism to reduce bias is creation of and adherence to judicial ethics that seek not only to reduce the impact of social relationships on judges but also to manage the public's perceptions of the impact of social relationships on judges. Ms. Juhler and Judge Cady point out several factors that may inadvertently create or reinforce bias when dealing with complex and controversial societal issues, including limited experience and stress. Judges are in a unique position to reduce stress in community groups by working on proactive solutions that improve the administration of justice
- **The Purpose of Participation in Community Groups**
Judges should be allowed to participate in community groups that address complex social issues that come before the court. Judges have a unique perspective that will inform the work of the group. In addition, judges participating in community groups are likely to find outlets to help address the negative emotional states involved in judging and the stress of making decisions when there is no obvious “best” choice. The quality of justice will improve with judicial participation in community groups as judges gain more information to use in weighing and understanding evidence.
 - **Integration into Court's Administrative Structure**
Since involvement in community groups is an extension of the education process, it should be integrated into the administrative structure of the court. Ms. Juhler and Judge Cady recommend that the highest court in each state should decide which types of groups judges should attend; analyze the types of cases that are heard, paying attention to high volume cases, and cases that cause significant levels of stress. Court administrators should schedule judicial time on a rotating basis.
 - **The Role of Judges with Pro Se Litigants**
In a domestic abuse case, when one or both parties are unrepresented, the judge should ensure that justice is done by eliciting information as necessary. Judges should ask questions of pro se litigants and, when fairness requires it, should ask questions of represented parties in addition the questions posed by the attorney.

Rule 1.01 Comment 4

Observing Standards of Judicial Conduct

Jennifer Juhler and Judge Mark Cady

Iowa State Court Administrator's Office and Iowa Supreme Court

Not dated

Ms. Juhler and Judge Cady recommend the following revision of Rule 1.01 Comment 4 to encourage judicial participation in community groups that deal with complex social issues. (Additions underlined.)

1.01 Observing Standards of Judicial Conduct.

Commentary:

[4] Deference to the judgments and rulings of courts depends upon public confidence in the integrity, independence, impartiality and accessibility of judges. The integrity, independence and impartiality of judges depends in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known to the public and are known for their probity, fairness, honesty, uprightness, and soundness of character. The accessibility of judges depends upon their ability to interact with the general public without compromising judicial integrity, independence and impartiality. Public confidence in the impartiality, integrity and independence of the judiciary is maintained by judges who are seen acting in a manner free from favoritism, self-interest or bias. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

Rule 2.04 Comment 1

Impartiality and Fairness

Jennifer Juhler and Judge Mark Cady

Iowa State Court Administrator's Office and Iowa Supreme Court

Not dated

Ms. Juhler and Judge Cady recommend the following revision of Rule 2.04 Comment 1 to encourage judicial participation in community groups that deal with complex social issues. (Additions underlined; deletions struck through.)

2.04 Impartiality and Fairness.

Commentary

[1] A judge must be objective and free of favoritism to ensure impartiality and fairness to all parties. While a judge's background and philosophy may influence the way in which the judge analyzes, interprets and applies the law, the judge's personal views, by themselves, should not be controlling. ~~Thus, a~~ A judge must uphold the law without regard to whether the judge personally approves or disapproves of the law in question. Judges should set aside time to examine personal views and to uncover unconscious bias. Such activities will promote fairness and justice.

Rule 2.05 New Comment 4

Observing Standards of Judicial Conduct

Jennifer Juhler and Judge Mark Cady

Iowa State Court Administrator's Office and Iowa Supreme Court

Not dated

Ms. Juhler and Judge Cady recommend addition of the following new comment to Rule 2.04 to encourage judicial participation in community groups that deal with complex social issues. (Additions underlined.)

2.05 Bias and Discrimination.

Commentary

[4] A judge should take part in activities designed to uncover subconscious bias and to learn as much about how to understand the role of such bias in decision-making. Each judge must be diligent to a process of self-examination to minimize the impact of personal bias in the administration of justice.

Canon 4(C)(3)

Governmental, Civic, or Charitable Activities

Jennifer Juhler and Judge Mark Cady

Iowa State Court Administrator's Office and Iowa Supreme Court

Not dated

Ms. Juhler and Judge Cady recommend addition of the following new black letter and comment to Canon 4(C)(3) to encourage judicial participation in community groups that deal with complex social issues. (Additions underlined.)

Canon 4(C)(3)

c. A judge may serve as a liaison to a community group that is concerned with the administration of justice, even if members of the group appear regularly before the court so long as

i. The community group creates a forum for the administration of justice that is separate from other functional aspects of the group

ii. The community group solicits balanced representation from attorneys who represent advocacy positions

iii. The activities of the group look at trends with respect to the administration of justice and not at specific cases

iv. The community group demonstrates an appreciation of the role and importance of judicial independence

Commentary

[1] When a judge acts as liaison to a community group to aid in the administration of justice, the judge should educate the community members about the role and function of the judiciary and special ethical issues that can limit judicial participation. Such efforts allow judges to be seen by the public and demonstrate the independence and integrity of the judiciary.

[2] A judge should not take part in a community group that seeks to improve only one advocacy position, for example a group that specializes in increasing the number of successful prosecutions.

[3] Lack of interest from attorney advocates does not have to limit judicial liaisons from participating in community groups. When a community group cannot engage balanced representation from attorneys, the group may set up a formal communication structure with appropriate attorney representatives and may send agendas and minutes in lieu of attendance and participation.

[4] If there are community groups that take opposing positions about the same legal issue, the judge liaison should attend both groups.