

**Colorado Supreme Court
Judicial Ethics Advisory Board (C.J.E.A.B.)
C.J.E.A.B. ADVISORY OPINION 2007-08
(Finalized and effective July 31, 2007)**

ISSUE PRESENTED

The requesting judge belongs to the Colorado Bar Association (CBA) and represents District Court Judges on the CBA's Board of Governors (BOG). He has been asked to sit on two BOG task forces, one devoted to Judicial Performance Commissions and the other focused on the death penalty. Both task forces were created as a result of legislation that was introduced in the last legislative session or is expected to be introduced in the next legislative session, and both task forces are charged with considering whether the CBA should take a position on these issues if bills are introduced in the future. The task forces would make a recommendation to the BOG whether a position should be taken and in turn the BOG would make a recommendation to the CBA Executive Council; the Executive Council would ultimately determine the CBA's position. The judge asks whether, consistent with the Code of Judicial Conduct, he may serve on either or both of the task forces.

CONCLUSIONS

The judge may serve on both task forces. He should, however, reassess the propriety of his involvement if the focus of the death penalty task force goes beyond merely recommending that the CBA take a position.

APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 4 encourages a judge to engage in quasi-judicial activities to improve the law, the legal system, or the administration of justice, "subject to the performance of his or her judicial duties." Canon 4B specifies that a judge may consult with, or appear at a public hearing before an executive or legislative body or an official thereof, on matters concerning the law, the legal system, the administration of justice, or the role of the judiciary as an independent branch within our system of government. Canon 4C states that a judge is encouraged to serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, the judicial branch or the administration of justice.

DISCUSSION

The judge's proposed service on the two CBA task forces involve quasi-judicial activity, and thus is governed by Canon 4. The Board's analysis here is informed in part by the advisory opinions interpreting that Canon which it has issued, including 2007-07 and 2006-08.

The Board concludes that the judge's proposed service on the task force devoted to considering whether the CBA should take a position on Judicial Performance Commissions constitutes quasi-judicial activity designed to improve the law, the legal system, and the administration of justice, and thus falls squarely within the ambit of Canon 4. The judge's service on the task force does not pose a conflict with the Canons, and we conclude that he may serve on that task force.

The judge's proposed service on the death penalty task force, while also a Canon 4 activity implicating the law, legal system, and administration of justice, potentially presents a closer question. As the task force is presently constituted, it will determine only whether the CBA should take a position on legislation related to the death penalty that might be introduced in the future, not what that position should be. Thus, in light of this limited role, we conclude that the judge may serve on the task force.

However, we encourage the judge to reevaluate the propriety of his participation if the role of the task force expands to include taking a position on the death penalty because such a position could cause his impartiality in a death penalty case that comes before him to be questioned. *Cf.* Mass. Ad. Op. 97-5, Wisc. Ad. Op. 06-1. Hence, an expanded role of the task force could adversely affect "the proper performance" of the judge's "judicial duties."

FINALIZED AND EFFECTIVE by the Colorado Judicial Ethics Advisory Board this 31st day of July, 2007.