



## Committee on Judicial Ethics

State of Connecticut Judicial Branch  
Superior Court Operations  
100 Washington Street, 3<sup>rd</sup> Floor  
Hartford, CT 06106

### MEMBERS:

Hon. Barry R. Schaller, Chair  
Hon. Linda K. Lager, Vice Chair  
Hon. Robert J. Devlin., Jr.  
Hon. Socrates H. Mihalakos  
Assoc. Prof. Jeffrey A. Meyer

April 8, 2009

Honorable Barbara M. Quinn, Chief Court Administrator  
Office of the Chief Court Administrator  
Supreme Court Building  
231 Capitol Avenue  
Hartford, CT 06106

Re: Formal Advisory Opinion JE 2009-10

Dear Judge Quinn:

You have requested an opinion from the Committee on Judicial Ethics concerning the propriety of a judge serving on the Board of Directors of the Greater Hartford Legal Aid (GHLA). For the reasons that follow, it is our unanimous opinion that serving on the Greater Hartford Legal Aid Board of Directors would violate Canon 5(b)(1) of the Code of Judicial Conduct and would also implicate Canon 2(a).

A judge's participation in extra-judicial activities is governed by Canon 5 of the Code of Judicial Conduct. Canon 5(b) of the Code allows judges to participate in civic and charitable activities "that do not reflect adversely upon the judge's impartiality or interfere with the performance of his or her judicial duties" and permits judges to "serve as a member, officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members," subject to certain limitations. One such limitation is that a judge "should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court." The commentary to this provision states that:

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he or she is affiliated to determine if it is proper

to continue in his or her relationship with it. For example, in many jurisdictions many hospitals are now more frequently in court than in the past. *Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.* [Emphasis supplied.]

Pursuant to Canon 2, judges must avoid impropriety and the appearance of impropriety in all of their activities and must act at all times “in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Judges must also be cognizant not to “lend the prestige of judicial office to advance the private interests of others” or to “convey or permit others to convey the impression that they are in a special position to influence him or her.”

Whether a judge may serve as an officer or director of the GHLA depends upon several factors, including the nature of the GHLA, whether the organization is frequently involved in litigation and adversary proceedings that are likely to come before the judge, as well as before any court, whether the GHLA makes policy decisions that may have political significance or that imply commitment to causes that may come before the courts, and whether a judge’s involvement with the organization would reflect adversely upon his or her impartiality.

The GHLA describes itself, in its online materials, as a “not-for-profit law firm whose staff provides clients living in poverty with free representation for civil legal issues.” (See [www.ghla.org/AboutGHLA.htm](http://www.ghla.org/AboutGHLA.htm)). According to the GHLA’s 2007 Annual Report, its litigation caseload appears to be growing. The report states that the GHLA “opened and worked on several hundred more cases than the year before, providing additional clients with comprehensive representation.” It is clear that the GHLA operates as a law firm with its own staff rather than as an administrative body assigning cases to lawyers on a pro bono basis. Further, it is frequently involved in litigation and adversary proceedings that are likely to come before the judge, as well as before any court in the state.

Not only does the GHLA operate as a non-profit law firm, it is also a self-described “advocacy” group seeking to implement broad-based policy changes that may implicate political issues or social issues unrelated to the administration of justice. The organization’s stated mission is to “achieve equal justice for poor people, to work with clients to promote social justice, and to address the effects and root causes of poverty.” For example, in its 2007 Annual Report, the Executive Director of GHLA highlighted the important successes achieved in its systemic advocacy for that particular reporting year. The report states:

GHLA attorneys led a reform of the probate law that preserves individuals’ independence; reduced the chance that an inaccurate background check would keep an individual from getting a job; participated in class litigation to increase access to social services for persons with disabilities; and led efforts that are expected to significantly increase dental services for low-income children in Connecticut.

In addition, GHLA describes its probate law advocacy work as a “three-year effort to change the probate law and procedures to ensure that the independence and rights of

seniors are protected during conservatorship proceedings.” (Report, p. 7). In connection with its legislative efforts, the report states that GHLA employment attorneys “helped draft, and later testified in support of ‘An Act Concerning the Release, Sale and Accuracy of Conviction Information,’ which was enacted in the 2007 legislative session.” (Report, p. 9).

In rendering ethics opinions on the issue of whether judges can serve on boards of legal aid societies, advisory committees from other jurisdictions have looked to the nature of these organizations and the type of work they perform. For example, the Florida committee concluded, in Florida JEAC Opinion 86-16, that if a legal aid society “engages in litigation directly or represents impoverished people through the use of staff counsel, service on the board of directors would be prohibited by Canon 5B(1).” The committee noted that service would be permissible if the legal aid society was acting “only as an administrative body to assign cases to lawyers on a pro bono basis” and did not “make policy decisions of political significance or that may imply commitment to causes that may come before the courts for adjudication.” *Id.* The Florida committee also concluded that legal aid societies are not necessarily organizations “devoted to the improvement of the law, the legal system, or the administration of justice,” as those terms are utilized in Canon 4 but, rather, organizations “in the nature of a law firm that limits its representation to indigent clients.” Florida JEAC Opinion 97-6. (See also Massachusetts CJE Opinion 89-2; Pennsylvania Informal Opinions 2/25/08 & 4/15/4; Texas Ethics Opinions 281 & 270).

By way of contrast, the Michigan committee recognized a distinction between organizations that are frequent litigants and organizations that provide counsel for indigents, but are not themselves parties in courts. Michigan Opinion JI-38. Michigan permitted service on the board because the organization was “advocating the interest of the particular client rather than the interest of the organization.” (See also Utah Informal Opinion 00-1). We do not adopt this distinction, however, and, based upon the facts presented, conclude that the GHLA operates as a law firm with a focus on providing assistance to indigent clients.

Based upon the facts presented, including that the GHLA is a law firm that is regularly engaged in adversary proceedings in any court and that the GHLA appears to make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication, it is the unanimous opinion of this Committee that serving on the Board of Directors of the GHLA would violate Canon 5(b) and would also implicate Canon 2. Judicial service on the board of an organization that engages in this type of issue advocacy may undermine the public’s confidence in the integrity and impartiality of the judiciary and may create a perception that the judicial official is lending the prestige of judicial office to advance the private interests of others in violation of Canon 2.

The opinions of the Committee on Judicial Ethics are advisory in nature. Judicial conduct that is consistent with an advisory opinion issued by the Committee may be evidence of good faith on the judge’s behalf, but our opinions are not binding on the Judicial Review Council, the Superior Court, the Appellate Court or the Supreme Court in the exercise of their judicial discipline responsibilities. You may submit a written request for reconsideration, explaining the basis for the request, to the Secretary to the Committee

within thirty days after distribution of this opinion. Policy & Rules of the Committee, §10.

Sincerely,

Barry Schaller, Chair  
Committee on Judicial Ethics