

Pilot Project Summer 2017: A Starting Point for
Some Frequently Asked
Judicial Ethics Questions

To help make the Committee's ethics opinions more easily accessible to judges, we are summarizing selected rules and opinions on specific topics in this pilot project. Although the included rules and opinions address some questions judges frequently ask about these topics, the answers are intended as a starting point for research and analysis rather than an exclusive or comprehensive source of guidance. There is no substitute for seeking written guidance from the Committee on matters that are not squarely addressed in a black-letter rule or opinion.

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Chapter One: Civic and Charitable Extra-Judicial Activities

Scope Note

This chapter focuses on extra-judicial activities involving educational, religious, charitable, cultural, fraternal, and civic organizations not conducted for profit.

It does not cover any political activities. Events organized or sponsored by political organizations, political clubs, or candidates, or paid for by an elected official's campaign committee – even for a non-political purpose – raise a distinct set of issues and must be analyzed separately (*see generally* 22 NYCRR 100.0[M]; 100.5[A][1][a]-[i]).

It also does not address a part-time judge's possible outside employment in a federal, state or municipal department or agency (*see* 22 NYCRR 100.6[B][4]), or a full-time judge's service on governmental commissions or other governmental positions (*see* 22 NYCRR 100.4[C][2]).

Finally, it does not address participation in more “freelance” avocational activities (such as writing, publishing or reviewing books, performing in a band, teaching, or the like).

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1. Quick Start: Some Questions to Ask Before Becoming Involved With a Non-Profit

- A. What is the purpose and nature of the organization?
 - (i) Is the entity a bar association, a law school, or a court employee organization?
 - (ii) Is the organization devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice?
 - (iii) Does the organization have tax-exempt status under 501(c)(4)? Is it seen as closely aligned with a particular political party? Does it support or endorse specific candidates?

- B. Is it likely the organization will be “engaged regularly” in “adversary proceedings” before “any court”?
 - * If YES, then a ***full-time*** judge may not serve as an officer, director, trustee or non-legal advisor. (This restriction does not apply to part-time judges.)

- C. Is it likely the organization will be engaged in proceedings that ordinarily will come before the judge?
 - * If YES, then the judge may not serve as an officer, director, trustee or non-legal advisor. (This restriction applies to all judges.)

- D. Does the judge have the power to make referrals to the organization in the course of his/her judicial duties?

* If YES, then the judge may not serve as an officer, director, trustee or non-legal advisor. (This restriction applies to all judges.)

E. Will membership cast reasonable doubt on impartiality; will it undermine integrity, independence, or impartiality; will it demean the judicial office; will it interfere with the proper performance of judicial duties; will it lead to frequent disqualification?

F. Is the organization involved in fund-raising of any sort, and will the judge be asked or expected to participate in any way?

G. Are the nature and purpose of the organization changing; is it advocating new positions; are its membership rules changing; has it begun to appear in legal proceedings?

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2. What General Rules Govern Such Activities?

In general, the judicial duties of a judge take precedence over all the judge's other activities (22 NYCRR 100.3[A]). Thus, a judge may participate in extra-judicial activities that are not incompatible with judicial office and do not (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) detract from the dignity of judicial office; or (3) interfere with the proper performance of judicial duties (22 NYCRR 100.4[A][1]-[3]).

Section 100.4 is the natural starting point for all (non-political) extra-judicial activities, as it is entitled "A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations."

Here, we are specifically considering involvement in civic and charitable activities, which are addressed in [Section 100.4\(C\)](#).

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a) Serving as Officer, Director, Trustee, or Non-Legal Advisor

In general, a judge may be a member or serve as an officer, director, trustee or non-legal advisor¹ of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit (22 NYCRR 100.4[C][3]).

But two important exceptions are set forth expressly in subparagraph (a).

¹ A full-time judge, who may not practice law (22 NYCRR 100.4[G]), may nonetheless serve as a "non-legal advisor" to such organizations.

- **All judges:** You may not serve if it is “likely” the organization will be engaged in proceedings that ordinarily would come before you.
- **Full-time judges:** You also may not serve if it is “likely” that the organization “will be engaged regularly in adversary proceedings *in any court.*”

Other restrictions apply. Some additional questions to ask yourself before agreeing to serve as officer, director, trustee, or non-legal advisor:

- Do you have the power to refer cases to the organization? (See [Question 6a.](#))
- Does the organization take positions on matters of substantial public controversy, or regularly engage in conduct that would be impermissible for you? (See e.g. [Question 6f.](#))
- Does the organization endorse or promote specific candidates for public office? (See [Question 9.](#))
- Might being a member or officer raise reasonable questions about your impartiality or the independence of the judiciary, result in frequent disqualifications, or otherwise interfere with proper performance of your judicial duties? (See e.g. [Question 6e.](#))

If you are not sure, please contact the Committee.

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b) Personal Involvement in Fund-Raising

A judge generally may attend fund-raisers for a not-for-profit educational, religious, charitable, cultural, fraternal or civic organization (22 NYCRR 100.4[C][3][b][ii]) and donate his/her own money to such entities (see [Question 3](#)).

General rules of thumb:

- **don’t** personally solicit funds (22 NYCRR 100.4[C][3][b][i]);
- **don’t** lend the prestige of judicial office to fund-raising or membership solicitation (22 NYCRR 100.4[C][3][b][iv]); see also [Question 2d](#);
- **don’t** be a speaker or the guest of honor at an organization’s fund-raising event, unless a specific exception applies (see [Question 2c](#)).

In Opinion [15-171](#), modifying prior opinions, the Committee recognized one narrow exception to the otherwise complete ban on personally soliciting funds. The Committee advised: “section 100.4(C)(3)(b)(i) does not apply to a judge’s interactions with his/her family members, provided the judge makes no reference to his/her judicial office and does not otherwise lend the prestige of judicial office to his/her solicitations.”

In Opinion 16-153, modifying prior opinions, the Committee recognized a second narrow exception to the otherwise complete ban on personally soliciting funds. The Committee advised: “Section 100.4(C)(3)(b)(i) does not apply to a judge’s interactions with

judicial colleagues over whom he/she has no appellate or supervisory authority, provided the judge makes no reference to his/her judicial office and does not otherwise lend the prestige of judicial office to his/her solicitations.”

The exceptions recognized in Opinion 15-171 and Opinion 16-153 apply ONLY to personally soliciting funds from a judge’s family members or fellow judges over whom the judge exercises no supervisory or appellate authority. There is NO EXCEPTION for the judge’s friends.

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c) Appearing as Speaker, Guest of Honor, or Award Recipient at an Event

- If you are invited to be a speaker, guest of honor, or award recipient at any event for a not-for-profit organization, you MUST find out if the event is a fund-raiser.

How to determine whether an event is a fund-raiser? As explained in Opinion 16-17 (citations omitted):

That a fee is charged for participation “is not determinative”.... Rather, the Committee looks to the “stated intent of the organization” as well as the surrounding circumstances in deciding “whether the activity is or is not a fund-raiser.”

While a modest admission price would ordinarily “signify a non-fund-raising event,” a judge should also consider the surrounding circumstances known to him/her. In one instance, an event’s modest ticket price was belied by “substantial, ongoing and prominent fund-raising [at the event] as the attendees are strongly urged to upgrade to silver, gold, life, or corporate memberships, and are publicly recognized for making full or partial payment during the dinner” (Opinion [15-154](#)).

- If there is to be any fund-raising whatsoever at the event, take a very careful look at the rules and prior opinions. General rules of thumb:
 - **Don’t** personally solicit funds
 - **Don’t** allow others to use your name, image, or title to solicit funds, to sell tickets, or to advertise a fund-raising event.
- You may be an announced speaker or guest of honor at a fund-raising event for the following organizations ONLY:
 - A bar association
 - A law school or law school alumni association
 - A court employee association
- For all other entities’ fund-raisers, including colleges and universities:
 - **Don’t** be a speaker

- **Don't** be the guest of honor
- You may accept an **unadvertised** award that is **ancillary** to the event. In essence, it should be a surprise to those who attend the event; your name should not be mentioned in advance, whether on the invitations, announcements, or advertisements, etc. While accepting the award, you may be identified as a judge and “make brief thank-you remarks.”
- See e.g. Opinion [14-93](#) and Opinion [11-37](#) for guidance on pre-event communications vs communications during or after the event.

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d) Appearing on Regular Letterhead

Section 100.4(C)(3)(b)(iv) provides:

“A judge as an officer, director, trustee or non-legal advisor, or a member or otherwise: ... (iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, but may be listed as an officer, director or trustee of such an organization. Use of an organization's regular letterhead for fund-raising or membership solicitation does not violate this provision, provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.”

Opinion [15-219](#) is a good starting place to find a line of opinions interpreting Section 100.4(C)(3)(b)(iv). It also amends some prior opinions.

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3. May a Judge Make Donations to Non-Profits that Appear Before Him/Her, or Whose Members Appear Before Him/Her?

Yes. As summarized in Opinion 15-163 (citations omitted):

As a general rule, the Committee has advised “it is of no ethical consequence for a judge to make a monetary contribution to a non-profit organization..., even if the organization appears in the judge’s court.” Thus, the judge may make such contributions without disclosure or disqualification, provided they are “relatively modest and not essential to the operation of [the] organization.” In other words, a judge’s charitable contribution does not “reasonably” call into question the judge’s ability to be fair and impartial, unless it is “a particularly large contribution that is essential to sustain the operations of the particular agency.”

Thus, for example, a judge may make charitable contributions to the Legal Aid Society (see Opinions 04-140; 95-131). A judge also may purchase tickets and attend a fund raising dinner for an organization which supports victims of child abuse and helps prepare

them for court appearances, where the event itself is not “so extraordinarily one-sided in nature that [the judge’s] attendance would necessarily cast doubt on” the judge’s impartiality (Opinion 13-185). Such donations do not ordinarily require disclosure or disqualification.

Search tip: To find all the opinions mentioned in this section, and later opinions that cite them, use this search: **15-163 OR 04-140 OR 95-131 OR 13-85**
(You can cut and paste this text into the [search engine](#).)

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4. May a Judge Collect Goods or Recruit Volunteers for Non-Profits?

No. As described in Opinion [14-153](#) (citations omitted):

The Committee has advised that the ban on personally soliciting funds and fund-raising activities also “includes soliciting non-cash or in-kind donations.” Further, “[a]ny involvement that would be seen by the public as fund-raising by the court system itself is also prohibited,” and thus “the rules [barring] fund-raising apply not only to judges, but also to courts and court entities, and to fund-raising on court property.” For example, the Committee has advised that a court may not participate in a not-for-profit organization’s charitable fund-raising event, where participating employers “allow their workers to work in casual clothes in exchange for a \$5 donation to United Cerebral Palsy,” and participating workers “receive a button which would indicate that their casual clothing was a result of their contribution.” Nor may a judge establish a public clothing solicitation drive for the poor either in the name of the court or in connection with a non-profit organization’s efforts to help public housing residents develop business skills. Similarly, the Committee has advised that a judge may not act as coordinator in a campaign for the Boy Scouts to collect canned food for the homeless, “adopt” a military unit in the name of the court for charitable purposes, or conduct a book drive or solicit publishers or book sellers to donate books to use as a sentencing tool. The Committee has noted such activities, though laudable, would impermissibly lend the court’s prestige to a particular charitable endeavor in violation of the Rules Governing Judicial Conduct. For similar reasons, the Committee believes that allowing charitable collection containers within the courtroom to collect winter clothing is likewise impermissible, even where the drive would be established in the name and at the request of, a local bar association. The public will readily perceive that an outside organization cannot place collection bins in the courtroom without the permission of the judge and/or court administrators. Thus, there is no practicable way to avoid the perception that the court is lending its prestige to a particular charitable endeavor.

Similarly, in Opinion [16-17](#) (some citations omitted), the Committee advised:

A judge may not personally solicit items for clothing or food drives, or otherwise solicit non-cash or in-kind contributions. Thus, for example, a judge “may not distribute flyers at the local grocery store asking customers to donate food items, or collect donations of either food or cash.” Instead, he/she may participate after such donations are received, by packing and distributing the donated items. Thus, this judge may not solicit or accept food, clothing or any other in-kind donations on behalf of his/her house of worship, whether as a ministries leader or otherwise, and may not do so indirectly by “promoting” such drives to the congregation. The judge may, however, assist in planning such drives behind the scenes (*see generally* Opinion 07-17 [judge may serve on the planning committee for a fund-raising walk, but “may not serve or be identified as the chair of the committee or be involved in the solicitation of volunteers”]).

The Committee has, however, distinguished between recruiting volunteers to participate in a charitable project *from within* an organization, which is permissible, and soliciting volunteers from the general public, which is not (*see* Opinion [09-57](#) [a judge who serves on the board of a not-for-profit organization may recruit other organization members to participate in a project sponsored by the organization]).

Search tip: To find all the opinions mentioned in this section, and later opinions that cite them, use this search: [14-153 OR 16-17 OR 07-17 OR 09-57](#)
(You can cut and paste this text into the [search engine](#).)

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5. May a Judge Participate in an Athletic Event, Game, or Contest To Raise Funds for a Non-Profit?

The answer to this question can be somewhat fact-specific. Only a few examples are discussed here.

A judge may participate in a run, walk, or bike ride intended to raise funds for the sponsoring not-for-profit organization, “but may not (a) solicit contributions from any individuals [other than family members] including friends ... or attorneys; (b) solicit contributing sponsors [other than family members] for his/her walk; or, (c) allow the fact of the judge’s participation or his/her judicial title to be utilized to raise funds for the organization or the event” (Opinion 10-152, as modified by Opinion 15-171). Thus, the judge may participate as an athlete and contribute his/her personal funds to the charitable organization (*id.*). In light of Opinion 15-171, a judge may now also request sponsorships or contributions from family members, “provided the judge makes no reference to his/her judicial office and does not otherwise lend the prestige of judicial office to his/her solicitations.”

A judge “may be involved in ‘behind the scenes’ activities relating to [a fund-raising] event, including planning the event” (Opinion 12-142 [citations omitted]), but “must refrain from assisting in any prominent or substantial manner at the event, such as running “casino themed” games or serving as the master of ceremonies (*id.*). Other opinions involving fund-raising games or contests include Opinions 90-28 (judge may not “judge the grease pole and lumberjack contest” at a church’s fund-raising event, “because the judge’s role would be too prominent”); 90-62 (judge “may not participate in running any bingo games” at a fire department’s fund-raising event); 89-57 (judge may not participate as a bingo worker at a fund-raising event); 87-20 (judge may not work at bingo games which “are operated for purposes of raising funds for the Volunteer Fire Department”); cf. Opinion 88-111 (judge may judge a cake-baking contest only if the purpose of the event is not fund-raising).

Donating something to be sold or auctioned by a not-for-profit organization as part of a fund-raiser is analyzed somewhat differently. For example, the Committee has advised that a judge who is a member of a bar association may contribute a recipe for publication in a recipe book that will be sold by the bar association, where the proceeds of the sale are to be donated to the Judges and Lawyers Breast Cancer Alert Bar Association (Opinion 00-70). The Committee emphasized that the recipe book “will include contributions from” judges, lawyers, and non-lawyers, and the judge’s recipe would not be singled out in any way or used to solicit contributions (*id.*). Similarly, a judge may donate the use of a marital vacation home titled in his/her spouse’s name as a prize for a not-for-profit charitable organization’s fund-raising auction (Opinion 08-61).

Search tip: To find all the opinions mentioned in this section, and later opinions that cite them, use this search: [10-152 OR 15-171 OR 12-142 OR 90-28 OR 90-62 OR 89-57 OR 87-20 OR 88-111 OR 00-70 OR 08-61](#)
(You can cut and paste this text into the [search engine](#).)

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6. May a Judge Serve as an Officer or Director for...

a) ... a Non-Profit to Which the Judge Can Make Referrals?

Not permitted. As explained in Opinion [15-190](#) (citations omitted):

The Committee has previously advised judges not to serve on the board of directors of organizations or agencies to which a judge, directly or indirectly, refers cases, defendants or litigants. In plea agreements in vehicle and traffic cases, defendants in this judge’s court may be told to attend the not-for-profit agency’s safety programs. Although they are a relatively small part of the agency’s overall educational programming, the Committee concludes there would be, at the very least, an appearance of impropriety due to this apparent conflict between the judge’s adjudicative

duties and his/her role as a board member. Therefore, the judge may not serve on the agency's board of directors.

See also Opinion 96-96 (a judge may not serve as board member of a victim services agency, where the entity "will be engaged in proceedings that ordinarily would come before the judge").

Search tip: To find all the opinions mentioned in this section, and later opinions that cite them, use this search: **15-190 OR 96-96**
(You can cut and paste this text into the [search engine](#).)

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b) ... a Bar Association?

Permitted, with limitations (see e.g. Opinions 15-229 [president or vice president]; 10-68 [treasurer]; 89-116/89-121 [board member]). Indeed, judges are generally "encouraged" to serve as officers of bar associations (Opinions 10-68; 88-10).

They must, of course, observe all applicable limitations on judicial speech and conduct, and must therefore refrain from impermissible public comment on pending or impending cases (22 NYCRR 100.3[B][8]), avoid all "direct or indirect" political activity unless an exception applies (22 NYCRR 100.5[A][1]), and abstain from any personal solicitation of funds (22 NYCRR 100.4[C][3][b][i], [iv]).

For example, the Committee has advised that judges must not participate in a bar association's evaluation, rating or ranking of judicial candidates, as this could be construed as impermissible political activity by the judge (Opinions 91-72; 89-116/89-121; 88-100; *accord* Opinions 16-47; 07-130). A judge also should not undertake the role of introducing judicial candidates at an association-sponsored judges' reception (Opinion 96-49).

A judge who wishes to serve as treasurer of a bar association should carefully review Opinion [10-68](#) (and any subsequent opinions in that line) to avoid inadvertent mis-steps.

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c) ... a Homeowners' Association, such as a Co-Op or Condominium Board?

Permitted, with limitations (see e.g. Opinions 11-51 [board member]; 98-93 [treasurer]; 98-44 [officer]; 95-133 [member of steering committee]; 89-133 [president]).

For example, the Committee has advised that judges may not serve on legal and admissions subcommittees of a residential cooperative (see Opinions 95-69 [part-time judge]; 88-119 [full-time judge]).

In addition, a full-time judge must not render legal or investment advice or participate in decisions likely to lead to litigation (Opinions 15-149; 11-119; 11-51; 09-12; 98-02; 94-08; 89-133).²

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d) ... a Legal Services Organization?

Not permitted for a full-time judge, where the organization is “engaged regularly in adversary proceedings” (Opinion [97-70](#); [96-84](#); 22 NYCRR 100.4[C][3][a][ii]; cf. Opinions 88-130; 88-77 [applying a prior version of the rule]).

By contrast, a full-time judge may serve on the board of a bar association’s legal referral project, where neither the organization nor its representatives will appear in court providing direct legal services to individuals, but merely will refer individuals to legal services agencies (see Opinion [91-121](#)). A full-time judge also may, if permitted by law, serve on the board of the Interest on Lawyers Account (IOLA) fund which assists in providing civil legal services to poor persons (see Opinion [91-78](#); NY Const art 6, § 20).

Permitted, with limitations, for a part-time judge, provided the organization is not “engaged in proceedings that ordinarily would come before the judge” (22 NYCRR 100.4[C][3][a][i]; Opinions [07-72](#); [03-07](#); [94-51](#)).

Questions about whether a judge may permit his/her law clerk to serve on the board of a legal services organization can be very fact-specific (*compare* Opinion 05-121 *with* Opinion 98-143).

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e) ... a Law Enforcement Organization, such as the Fraternal Order of Police or a Police Athletic League?

Not permitted (see e.g. Opinions [14-124](#); [13-134](#)). A judge may not accept appointment or employment as a peace officer or police officer (22 NYCRR 100.4[C][2][b]; CPL §§ 1.20; 2.10). Likewise, a judge may not be a member or an officer of law enforcement organizations, although he/she may attend their social or fund-raising events, and make charitable contributions (see e.g. Opinion 16-35). As explained in Opinion 13-134 (citations omitted):

The Committee has previously advised that a judge may not be a member of a county police association; an association of active police officers and chiefs; or the county Deputy Sheriffs' Association. Indeed, a judge may not even be an honorary member of a local sheriffs' or deputy sheriffs'

² In addition, a full-time judge may not serve if the organization is engaged in frequent litigation (see Opinion 95-133; 22 NYCRR 100.4[C][3][a][ii]).

association. The Committee notes that, even though the local Fraternal Order of Police described in the present inquiry may be open to admitting judges and court employees as members, it remains an organization with an “explicit and exclusive law enforcement orientation.” Therefore, the Committee concludes that membership in the organization is incompatible with judicial office because it could cause the judge’s impartiality to reasonably be questioned.

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f) ... Birthright or Shooters Committee on Political Education?

Not permitted, although a judge may join as a regular member (Opinions 15-210; 09-70; 09-56). A judge also may join the NYCLU or Planned Parenthood as a regular member (see Opinion 98-101). As explained in Opinion 14-29 (some citations omitted):

Because a judge’s public involvement in extra-judicial matters of substantial public controversy may raise questions about a judge’s ability to act impartially in the performance of judicial functions, the Committee has advised that a judge should not serve on the board of directors of certain potentially controversial organizations, even though he/she may be a regular member (see Opinions 09-70 [Birthright]; Opinion 09-56 [Shooters’ Committee on Political Education]). In essence, taking a leadership role in such organizations may publicly associate the judge with organizational positions on matters of public controversy, in a way that simple membership does not.

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g) ... a Charitable Organization, such as the United Way?

Permitted, subject to limitations (see Opinions [97-64](#) [president]; [88-42](#) [board member]; see also e.g. Opinion 89-64 [Jaycees]; 01-72 [not-for-profit hospital]). The judge must abide by generally applicable limitations on judicial speech and conduct, including the restrictions on fund-raising.

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h) ... a Chamber of Commerce or Merchants’ Association?

Permitted for a part-time judge (see Opinions 02-82; 96-59; 95-151; 94-26; 92-116; 89-64). The judge must abide by generally applicable limitations on judicial speech and conduct, including the restrictions on fund-raising and political activity (see e.g. Opinion 05-106 [a judge must resign from the board of a chamber of commerce if the entity creates a political action committee]).

At this time, the Committee does not seem to have addressed the question for a full-time judge (*cf.* 22 NYCRR 100.4[D][3] [a full-time judge may not “serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity”]).

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7. May a Judge Serve on Various Committees or Subcommittees of a Non-Profit’s Board?

a) Compliance and Audit Committee

Not permitted for a full-time judge, where the committee’s duties “include the responsibility of ensuring that the organization’s accounting procedures comply with the law” (Opinion 03-138 [hospital]; 15-149 [private, non-profit school]; 22 NYCRR 100.4[G]).

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b) Legislative Subcommittee

For a full-time judge, this is largely a fact-specific inquiry, turning on whether the judge would be, in essence, a legal advisor to the organization (22 NYCRR 100.4[G]).

A full-time judge may not serve on the legislative subcommittee of a non-profit hospital’s board, even where the review of legislation is solely for discussion within the hospital, as the judge would essentially be serving as a legal advisor to the hospital (Opinion 00-76; 22 NYCRR 100.4[G]).

However, a full-time judge may serve on the legislative committee of a child resource center, the interests of which involve the protection of children and youth, where the entity is devoted to the improvement of the law, the legal system and the administration of justice (Opinion 93-121).

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c) Ethics Committee

For a full-time judge, this is largely a fact-specific inquiry, turning on whether the judge would be, in essence, a legal advisor to the organization (22 NYCRR 100.4[G]) and/or performing judicial functions in a private capacity (22 NYCRR 100.4[F]).

The Committee has advised that a **full-time judge** may not serve as chairperson of the business ethics committee of a not-for-profit hospital, where the committee will “review any and all proposed transactions, contracts or relationships between the organization and its directors,” as this “places the judge in the position of a legal advisor to the hospital” (Opinion 01-08). Conversely, a **part-time judge** may serve on a hospital’s ethics committee, where the committee “offers advice regarding the ethical implications of

policies, procedures, and treatment decisions and coordinates educational programs for the hospital staff” (Opinion 92-91).³

A judge may serve as a co-chair of a professional ethics committee of a local bar association, which provides ethics advice to attorneys (see Opinion 02-84).

A **full-time judge** may not serve on a bar association’s attorney grievance committee that reviews allegations of attorney misconduct, makes findings concerning such allegations, and transmits such findings to the judicial department’s grievance committee for further review (Opinions 07-184; 04-21; 22 NYCRR 100.4[F] [full-time judge may not perform judicial functions in a private capacity unless expressly authorized by law]). Conversely, because a **part-time judge** is not subject to Section 100.4(F), he/she may serve on a bar association’s attorney grievance committee (Opinions 15-129; 00-15; 95-49).

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d) Legal and Admissions Subcommittee

The Committee has advised that judges may not serve on legal and admissions subcommittees of a residential cooperative (see Opinions 95-69 [part-time judge]; 88-119 [full-time judge]; 22 NYCRR 100.4[G]).

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e) Bylaws Committee

For a full-time judge, this is largely a fact-specific inquiry, turning on whether the judge would be, in essence, a legal advisor to the organization (22 NYCRR 100.4[G]).

A full time judge may not serve on a bylaws committee for a not-for-profit club unless (1) the entity’s outside counsel handles legal matters for the club and (2) the judge will not give legal advice or engage in decisions likely to lead to litigation (Opinion 11-143).

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8. What Does Invidious Discrimination Mean?

As described in Opinion 96-82:

[A] judge should begin by ascertaining, first, whether the organization excludes persons from membership on the basis of age, race, creed, color, sex, sexual orientation, religion, national origin, disability or marital status. If the organization does discriminate on such a basis, then a determination must be made by the judge as to whether the exclusion is invidious. If the exclusionary

³ The Committee did not discuss whether service on this ethics committee involved serving as a legal advisor; in any event, a part-time judge, unlike a full-time judge, is permitted to practice law.

practice is reasonably related to a legitimate purpose (i.e., the “preservation of religious, ethnic, cultural or other values of legitimate common interest to its members”), membership is not prohibited. If, on the other hand, the discriminatory practice is one in which the policy of exclusion is arbitrary, and excludes persons or categories of persons solely on the basis of the characteristic in question, and by reason of such exclusion stigmatizes such persons or categories of persons as inferior, then the judge must conclude that the discrimination is invidious. Membership in such an organization is prohibited.

Search tip: To find Opinion 96-82 and other opinions citing it and/or Section 100.2(D), use this search: **96-82 OR "100.2(D)"**
(You can cut and paste this text into the [search engine](#).)

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9. When Is a Not-for-Profit Entity Deemed a “Political Organization”?

As described in Opinion 15-210 (footnote omitted):

Tax-exempt status under 26 USC 501(c)(3) “tends to suggest that an organization is not engaged in partisan political activity” (Opinion 14-117 n.2), whereas not-for-profit entities ... which are exempt under 26 USC 501(c)(4), may engage in “some partisan political activity” without jeopardizing their tax-exempt status (Opinion 14-117 n.5).

However, “[t]he fact that [501(c)(4)] organizations are legally permitted to engage in some political activity does not necessarily resolve the question of whether they are ‘political organizations’ under the Rules” (Opinion 14-117 n.5). It is also necessary to consider the organization’s “principal purpose” (22 NYCRR 100.0[M]) as reflected in its mission and public activities (see Opinion 14-117 n.2 [judges “must ultimately look to the Rules Governing Judicial Conduct, rather than the Internal Revenue Code, for guidance on whether their proposed participation in a particular organization is permissible”]).

In some instances, the Committee has concluded a particular 501(c)(4) organization is a “political organization” under the Rules. Thus, for example, the Committee has advised that a judge may not be a member of a 501(c)(4) organization which is primarily engaged in substantial political activity in support of specific candidates (see Opinion 14-95 [organization that “seeks to promote individuals with a particular viewpoint on abortion for election and appointment to public office at every level of government”]). Similarly, the Committee has advised that MoveOn.org’s 501(c)(4) educational advocacy arm is a “political organization” under the facts presented, as its primary purpose appears to involve supporting its

own political action committee (see Opinion 14-117 [concluding that the educational arm’s stated purpose “to ‘unleash progressive people power by encouraging and supporting MoveOn members and other progressives to step up as the leaders of their own campaigns for social change’” works essentially “to support certain candidates based upon their views of certain political issues”]).

Search tip: To find Opinion 14-117, Opinion 15-210, and other opinions citing them, use this search: **15-210 OR 14-117**
(You can cut and paste this text into the [search engine](#).)

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