

**FLORIDA SUPREME COURT  
JUDICIAL ETHICS ADVISORY COMMITTEE**

Opinion Number: 2017-2

Date of Issue: January 19, 2017

**ISSUE**

May a judge accept an appointment to the Florida Impaired Driving Coalition, an advisory body to the Florida Department of Transportation?

ANSWER: Yes, provided the Coalition does not engage in matters that could reasonably be perceived as favoring the State in DUI prosecutions.

**FACTS**

The inquiring judge has been offered a position on the Florida Impaired Driving Coalition, an advisory body to the Florida Department of Transportation. The judge currently presides over a court where DUI cases may be expected to be on the docket.

Based on the information provided by the judge and a review of the appropriate page on the Department's website, it appears this Coalition provides advice on numerous subjects related to impaired driving, such as improving enforcement and prosecution of the relevant laws, public education (including the severe consequences of a DUI conviction), treatment systems, and data collection. Further, the web page indicates the Coalition consists of representatives from many different governmental entities and private organizations, among them the Florida Conference of County Court Judges, the National Highway Traffic Safety Administration, several law enforcement agencies and State Attorneys' offices, and the Florida Chapter of Mothers Against Drunk Driving (MADD). *See Impaired Driving*, Florida Department of Transportation (last visited Dec. 1, 2017), <http://www.fdot.gov/safety/2a-programs/impaired-driving.shtm>.

**DISCUSSION**

Canon 4 of the Code of Judicial Conduct encourages judges to "engage in activities to improve the law, the legal system, and the administration of justice," but they should not do so in a manner that might "cast reasonable doubt on the judge's

capacity to act impartially as a judge.” Fla. Code. Jud. Conduct, Canon 4A(1). While normally a judge should not “consult with an executive body,” an exception is recognized for “matters concerning the law, the legal system, [and] the administration of justice.” Fla. Code Jud. Conduct, Canon 4C. Further, a judge may serve as a “non-legal advisor” to a governmental entity “devoted to the improvement of the law, the legal system, the judicial branch, or the administration of justice.” Canon 4D. However, the judge should not do so if it is likely that the organization in question will be engaged in adversarial proceedings before the court “of which the judge is a member.” Fla. Code. Jud. Conduct, Canon 4D(1).

Noting the inclusion of MADD among the Coalition members, we turn for guidance to a series of Committee opinions involving that group and the similar SADD (Students Against Drunk Driving). It is fair to say these organizations combine public education with advocacy. In Fla. JEAC Op. 82-18, MADD was described as “bring[ing] pressure on the legislature to enact stronger laws, and on the courts through court-watching programs.” However, that opinion actually gave tentative approval to a judge’s desire to serve on the local MADD chapter’s board of directors, observing that “[t]here is nothing wrong with trying to convince the legislature to change the law [or] the courts to try a different solution to a social problem.”<sup>1</sup> However, the Committee disapproved of a County Judge accepting the directorship given the likelihood that judge would be assigned to DUI cases.

Other opinions, not all of them unanimous, have both approved and disapproved of proposals to interact with MADD and SADD. Some doubt was cast on the continuing validity of 82-18 in Fla. JEAC Op. 86-6, wherein the inquiring judge had been invited to act as an “honorary chairperson” for SADD. A red flag in that opinion, perhaps, was certain language in the letter soliciting the judge’s assistance: “We feel your notability would enhance our progress.” The majority of the Committee concluded that the judge’s participation would improperly lend the prestige of judicial office to a private enterprise. *See* Fla. Code Jud. Conduct, Canon 2B. Similar objections were raised in Fla. JEAC Op. 00-18, wherein MADD invited one or more judges to nominate colleagues for recognition by the organization for “contribut[ing] to making our streets and highways safer.”<sup>2</sup>

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<sup>1</sup> The Committee was careful to note a distinction between a presentation to the court system in general and approaching an individual judge about a specific case.

<sup>2</sup> The Committee has approved a judge’s proposal to sit on a MADD-sponsored panel discussion so long as the event was not a fundraiser and the judge’s remarks could not be interpreted as publicly supporting MADD (Fla. JEAC Op. 06-17) and imposing as a condition of DUI probation attendance at a “victim impact panel” function even though the cost of the class helped fund the local MADD chapter (Fla. JEAC Op. 09-02). The language of the second opinion is particularly cautionary, however, noting that if other organizations in the same area offered a similar program “the

In the present case we find a number of distinguishing factors beginning with the fact that MADD is a participant in the Coalition rather than the controlling party. The members' input is not intended for MADD's direct benefit but for that of a governmental body. Whereas it might be argued that MADD advocates tough penalties for impaired drivers, this Coalition will advise the Department of Transportation, which does not set penalties for criminal traffic offenses. Further, it seems reasonable to expect the Coalition to weigh in on matters not associated with penalties, such as ensuring that treatment facilities are adequate and enlightening the general public that a DUI arrest can be an expensive proposition once fines, costs, and attorney fees are taken into account. We do not interpret the term "advice" to be limited to the enhancement of punishment for those actually convicted of DUI.

However, some members have expressed concern over mission statement language to the effect Coalition might offer advice on "improving enforcement and prosecution" in DUI cases. This language is indeed troublesome because it can be interpreted as suggesting partiality to the State. On the other hand, if the Coalition's role is limited to helping the legal system operate more fairly and efficiently when dealing with these cases, concerns over bias are less compelling. Accordingly, while we reach the tentative conclusion that participation in the Coalition falls within the scope of activities permitted under Canon 4, we strongly recommend that the inquiring judge ensure before accepting membership that the Coalition's portfolio does not extend to activities that might reasonably be viewed as favoring the State in DUI prosecutions.

## **REFERENCES**

Florida Code Jud. Conduct, Canons 2B, 4, 4A(1), 4C, 4D, 4D(1)  
Fla. JEAC Ops. 82-18, 86-6, 00-18, 06-17, 09-02.

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.

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probationer should be given an opportunity to choose between the providers," and that the costs of the MADD panel should be scrutinized to insure they are reasonable and do not simply amount to a charitable contribution.

**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 of the committee.** *See Petition of the Committee on Standards of Conduct Governing Judges*, 698 So. 2d 834 (Fla. 1997). However, in reviewing the recommendations of the Judicial Qualifications Commission for discipline, the Florida Supreme Court will consider conduct in accordance with a Committee opinion as evidence of good faith. *See id.*

The Committee expresses no view on whether any proposed conduct of an inquiring judge is consistent with substantive law which governs any proceeding over which the inquiring judge may preside. The Committee only has authority to interpret the Code of Judicial Conduct, and therefore its opinions deal only with whether the proposed conduct violates a provision of that Code.

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For further information, contact Judge Spencer D. Levine, Chair, Judicial Ethics Advisory Committee, Fourth District Court of Appeal, 1525 Palm Beach Lakes Boulevard, West Palm Beach, FL 33401.

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