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STATE OF WASHINGTON
ETHICS ADVISORY COMMITTEE
OPINION NO. 14-04

Question

May a judge or court commissioner of a superior court participate in a Boy Scouts Merit Badge Day event held in a courtroom during the noon hour of the court day?

The judges and court commissioners of a superior court have been invited to participate in a Boy Scouts Merit Badge Day. The judges and court commissioners have been asked to meet with small groups of scouts during the noon hour in the judges' courtrooms, during which time they would discuss the jury system, constitutional law, and other topics involving the law and the legal system. Any such participation by the judges and court commissioners is voluntary. The judges and court commissioners have also been asked to share their academic, career and personal backgrounds and why they are passionate about the justice system and being a judge.

The current adult leadership standard of the Boy Scouts of America states:

"The applicant must possess the moral, educational, and emotional qualities that the Boy Scouts of America deems necessary to afford positive leadership to youth. The applicant must also be the correct age, subscribe to the precepts of the Declaration of Religious Principle (duty to God), and abide by the Scout Oath and the Scout Law.

While the BSA does not proactively inquire about sexual orientation of employees, volunteers, or members, we do not grant membership to individuals who are open and avowed homosexuals or who engage in behavior that would become a distraction to the mission of the BSA."

The current membership standard for youth members of the Boy Scouts of America states:

“Youth membership in the Boy Scouts of America is open to all youth who meet the specific membership requirements to join the Cub Scout, Boy Scout, Varsity Scout, Sea Scout, and Venturing programs. Membership in any program of the Boy Scouts of America requires the youth member to (a) subscribe to and abide by the values expressed in the Scout Oath and Scout Law, (b) subscribe to and abide by the precepts of the Declaration of Religious Principle (duty to God), and (c) demonstrate behavior that exemplifies the highest level of good conduct and respect for others and is consistent at all times with values expressed in the Scout Oath and Scout Law. No youth may be denied membership in the Boy Scouts of America on the basis of sexual orientation or preference alone.”

Answer

CJC 1.2 provides that a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

CJC 3.1 provides in relevant part that a judge may engage in extrajudicial activities, except as prohibited by law or the CJC. However, a judge shall not participate in activities that will interfere with the proper performance of the judge’s judicial duties, participate in activities that would undermine the judge’s independence, integrity, or impartiality, or make extrajudicial use of court premises except for incidental use permitted by law. Comment [1] to CJC 3.1 provides in relevant part that participation in law-related and extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, and are encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. Comment [2] to CJC 3.1 provides in relevant part that because discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge’s official or judicial actions, are likely to appear to a reasonable person to call into question the judge’s integrity and impartiality, a judge’s extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination.

CJC 3.6(A) provides that a judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, sexual orientation, or other classification protected by law.

CJC 3.7 provides in relevant part that subject to the requirements of CJC 3.1, a judge may participate in activities sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including appearing or speaking at and being featured on the program of an event of such an organization.

The Code of Judicial Conduct does not prohibit a judge or court commissioner from voluntarily participating in a Boy Scouts Merit Badge Day event in a courtroom during the noon hour. Participating in such an event does not involve membership in the Boy Scouts of America, or imply agreement with, or endorsement of, the policies of the Boy Scouts of America. Use of courtrooms for this purpose is incidental only.