

NORTH DAKOTA JUDICIAL ETHICS ADVISORY COMMITTEE OPINION 2025-1

ISSUES

May a judge serve on the Board of Governors for the State Bar Association of North Dakota?

FACTS

A judge serves as president of the Board of Governors for the State Bar Association of North Dakota (SBAND). The SBAND Constitution states:

The President shall exercise the powers and perform the duties assigned to the President by law and the Constitution and By-Laws of the Association. The President shall be the chief executive officer of the Association, shall preside at all meetings of the Association and of the Board of Governors, shall generally supervise its affairs, and shall report regularly to the Association and the Board of Governors.

Recently, an issue arose surrounding the co-hosting of a webinar regarding serving the LGBTQ+ community. The webinar was advertised by SBAND and was to be co-hosted by SBAND. SBAND later made the decision not to co-host the webinar. The media covered the issue and it has become political in nature. Ultimately, SBAND reversed its decision and will now co-host the webinar.

ANALYSIS¹

Canon 1, Rule 1.2 of the Code of Judicial Conduct states: “A judge shall act at all time 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.”

Canon 1, Rule 1.3 of the Code of Judicial Conduct states: “A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”

Canon 2, Rule 2.1 of the Code of Judicial Conduct states: “The duties of judicial office, as prescribed by law, shall take precedence over all of a judge’s personal and extrajudicial activities.”

Canon 3, Rule 3.1 of the Code of Judicial Conduct states:

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the duties of judicial office;

¹ Judge Lolita Romanick did not participate.

- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Canon 3, rule 3.7(A) states:

Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including the following activities:

- (6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:
 - (a) will be engaged in proceedings that would ordinarily come before the judge; or
 - (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Comment 2 to Rule 3.7 states:

Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

Numerous jurisdictions have considered the issue of a judicial officer serving on the board of a bar association. However, there is not a consensus; some jurisdictions advise against such service while others allow service with a number of restrictions. Those jurisdictions finding that it may be permissible to serve note that there is nothing in the Code of Judicial Conduct which outright precludes the service.

The Committee agrees that the Code of Judicial Conduct does not outright preclude service on SBAND's Board of Governors. The initial analysis under Rule 3.7(A) would generally permit a judge to serve on the Board of Governors because SBAND is an organization "concerned with the law, the legal system, or the administration of justice." However, the analysis does not end there.

The Nevada Standing Committee on Judicial Ethics and Election Practices determined that a district court judge may not be a candidate for election or re-election to the Board of Governors of the State Bar of Nevada. NV std. Comm. Jud. Eth. Op. No. JE11-005. The Committee in that opinion found that the jurisdictions finding it permissible for a judge to serve as an officer of a bar association, failed to complete the analysis required under Rule 3.7(a) and Rule 3.1. The Nevada Standing Committee found the concerns raised by jurisdictions finding it impermissible to serve as an officer of a bar association were persuasive.

In finding that a judge may not run for election to the Board of Governors of the Florida State Bar, the Florida Judicial Ethics Advisory Committee stated:

Additionally, conflict may arise between the interests and demands of the bar and the judiciary that may present difficulties for a judge purporting to act in an elected, representative capacity for members of the bar.

FL Jud. Eth. Adv. Comm. Op. No. 2004-34. The Vermont Judicial Ethics Committee, concluding that a judge should not seek office on the Vermont Bar Association's Board of Managers stated:

Generally, participation in the activities of state bar associations is encouraged under the Judicial Code of Conduct. Nevertheless, judges must continually balance the need to maintain judicial impartiality and dignity with the potential entanglements occasioned by direct participation in public affairs. Such entanglements are likely to be more common, of a more serious nature, and more difficult to avoid for a judge who is a member of the Board of Managers than for judges who participates (sic) in bar association activities more selectively. When service is predicated on a contested election, negative reflections on the judge are probably unavoidable.

VT Jud. Eth. Comm. Op. No. 2728-13.

While some jurisdictions which have found it inadvisable for a judge to serve as an officer for a bar association have also allowed a judge to complete a term as long as the term can be completed consistent with the judge's obligations under the Code of Judicial Conduct, the Committee does not believe it is advisable to either seek to serve on the Board of Governors or to complete a current term due to the likely unavoidable situations which could create doubt as to the judge's independence, integrity, or impartiality.

CONCLUSION

The Committee is of the opinion that a judge does not inherently violate the Code of Judicial Conduct by serving on the Board of Governors of the State of North Dakota. However, the Committee is also of the opinion that a judge should not serve on the Board of Governors of the

State of North Dakota because there is too great a risk that situations may arise which could result in violation of the Code of Judicial Conduct.