

NORTH DAKOTA JUDICIAL ETHICS ADVISORY COMMITTEE

OPINION 2025-2

ISSUES

Is membership in the American Bar Association (ABA) a violation of the Code of Judicial Conduct?

FACTS

The judicial branch currently pays the dues for each judge to be a member of an organization from a list of approved organizations. One of those organizations is the ABA. The requesting judge has been a member of the ABA for many years. A proposal has been made to eliminate the ABA, and other organizations, from the list of approved organizations based on the conclusion that paying the dues for ABA membership would be “inconsistent with the judiciary’s duty of impartiality.” The author of the proposal has determined that “the ABA is engaged in ...presumptively nongermane activities with the purpose or consequence of demonstrating a position on a controversial issue.” The proposal does not express a determination on whether membership in the ABA would be ethical violation for an individual judge.

ANALYSIS

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;

(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...

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.

Many jurisdictions have tackled the issue of whether membership in certain associations, including bar associations, is appropriate under the Code of Judicial Conduct. The opinions focused mainly on three factors: 1) the membership of the organization; 2) the purpose of the organization; and 3) the judge's role and activities in the organization. See also Rule 3.7, cmt. 2.

The Colorado Supreme Court Judicial Ethics Advisory Board noted that other jurisdictions distinguish between "professional- or geographic-wide bar associations" and "specialty bar associations."

Profession- and geographic-wide bar associations are broad and inclusive; their members "reflect all, or many different segments of the bar and represent all sides of various issues confronting the profession." D.C. Ad. Comm. On Jud. Conduct, Ad. Op. No. 4 (Feb. 22, 1994), 1 n. 1. Specialty bar associations, on the other hand, tend to have fewer members and typically fall into one of three categories: they (1) represent a particular class of clients (e.g., plaintiffs or defendants); (2) engage in a specialized practice area (e.g., family law); or (3) reflect a particular group of lawyers (e.g., women or racial minorities). *See id.*

Op. 2022-02. Profession- or geographic-wide associations are generally permissible because "members represent all sides." *Id.* More caution is used with specialty bar associations and tends to hinge on the membership of the association. See id. (committee not concerned with associations that promote diversity and foster inclusion like a women's bar association as long as membership is not restricted to a particular group); Conn. Comm. On Jud. Ethics Op. 2012-10 (finding it permissible for a judge to join a national ethnic bar association because there is no requirement judge belong to a specific ethnic group); FL Jud. Ethics Adv. Comm.

Op. 95-21 (finding it impermissible for judge to be a member of the Academy of Florida Trial Lawyers because organization required certification that less than 40% of workload involves defense work).

In general, the Code of Judicial Conduct allows judges to participate in organizations “concerned with the law, the legal system, or the administration of justice” as long as participation would not violate Rule 3.1. Canon 3, Rule 3.7. Other jurisdictions have determined that mere membership in an organization primarily concerned with the law, legal system and administration of justice, despite the organization having some advocacy activities, is not a violation of the Code of Judicial Conduct. See CT Comm. on Jud. Ethics Op. 2009-17 (finding membership in the American Board of Trial Advocates permissible, subject to appropriate restrictions, despite the organization adopting resolutions, taking a position on legislation, and filing amicus curiae briefs); MA Comm. On Jud. Ethics Op. 2003-12 (finding membership in Boston Bar Association permissible but not activities which could cause doubt about judge’s impartiality).

A judge’s role and activities in the organization are of great importance in determining if membership in an organization would impact the perception of the judge’s independence, integrity, and impartiality. For instance, the Florida Judicial Ethics Advisory determined that membership was permissible in the National Association of Women Judges; however, the judge would be required to monitor the public discussion of a proposed resolution to not select any jurisdiction as a future site for meetings if the jurisdiction has enacted laws voiding or repealing protections against discrimination based on sexual orientation. Op. 2021-11. The committee noted the organization differs from other groups and associations related to the law because its membership consists of only judges and resolutions adopted by the organization will be associated with the group of judges. Id. While a judge can be a member of an organization, the judge cannot take part in lobbying or other activities which could case doubt on the judge’s impartiality. See FL Jud. Ethics Adv. Comm. Op. 2020-22 (NAACP); MD Jud. Eth. Comm. Op. 2025-05 (Maryland State Bar Association); WA Ethics Adv. Comm. Op. 92-02 (geographic-limited bar association involved in lobbying efforts).

As this Committee cautioned in Opinion 2025-1, other committees have likewise cautioned against serving in leadership roles. The Massachusetts Committee on Judicial Ethics reached the conclusion that a judge may be a member of the Boston Bar Association but may not serve on the Council finding “[t]he more that a judge takes a leadership role or a role as spokesperson in such an organization, the more likely it is that the restrictions [contained in the Code] would prohibit assuming [a leadership position].” Op. 2003-12. “The difficulty, therefore, is not with the activities per se, but with judicial participation at the highest level of policy-making regarding those activities or otherwise advancing the association’s goals.” Id.

Turning now to the question posed. In 1878, the ABA was founded “on a commitment to set the legal and ethical foundation for the American Nation.” americanbar.org/about_the_aba/ (last accessed June 2, 2025). The House of Delegates was formed in 1936 and is the policy-making body of the ABA. americanbar.org/delegates (last accessed Jun 2, 2025). The House of Delegates determines which resolutions on professional and public issues will move forward.

americanbar.org/groups/leadership/house_of_delegates/(last accessed Jun 2, 2025). The ABA has been involved with advocacy as far back as 1937 when the ABA opposed Franklin Delano Roosevelt’s court-packing plan. Gregory P. Joseph, The Litigation Section at 25 the ABA at 120, 24 No. 3 LITIG 1 (1998). The first amicus curiae brief was submitted by the ABA in the 1940s. americanbar.org/groups/committees/amicus/1940_1997 (last accessed June 2, 2025).

Few opinions have been rendered regarding membership in the ABA specifically; however, the United State Judicial Conference Committee on Codes of Conduct, in Advisory Opinion 85 (2009), was asked if it would be proper for a judge to hold membership in the ABA and actively participate in ABA programs considering the ABA’s positions on controversial issues. The United State Judicial Committee determined that it would be permissible.

The Committee advises that it is permissible for a judge to be a member or officer of an open membership bar association and that recusal is not required where such a bar association is a party or files an amicus curiae brief, so long as the judge has not participated in the development of the bar association position on the matter in question in the suit.

In the Committee’s view, the judge’s membership in the ABA and participation on an ABA panel, as long as the panel is not devoted to a controversial subject, cannot reasonably be viewed by the bar or the public as an endorsement of any of the positions the ABA has occasionally taken on controversial issues.

The Florida Judicial Ethics Advisory Committee also determined that “judicial membership in the ABA is proper because the ABA is an organization devoted to the cited goals in Canon 4C.” Op. 93-5; see also SC Adv. Comm. Standards of Jud. Conduct Opinion 8-2020 (finding it is permissible for a judge to serve as State Judicial Outreach Liaison with the ABA). Three members of the Florida committee felt a judge could belong to a multifaceted organization but not participate in political activity. *Id.* One member likened it to belonging to the Catholic church despite its vocal position on abortion or membership in the National Rifle Associations despite its public position on gun control. *Id.* In 1992, the Appellate Judges Conference of the Judicial Division of the American Bar Association accepted the recommendation concluding:

“(1) judges are ethically forbidden to make public statements on certain matters; (2) some ABA public policies deal with those matters; (3) judicial members of the ABA should not participate in debate or adoption of those policies; (4) abstentions, disclaimers, and other devices should be employed to discourage attribution of those policies to the ABA’s judicial members; and (5) judges should not occupy the highest ABA offices because those who do will unavoidably become identified with the ABA’s public positions.”

MA Comm. On Jud. Ethics Op. 2003-12 (citing the recommendation).

CONCLUSION

The Committee is of the opinion that a judge's membership in the ABA is not a violation of the Code of Judicial Conduct as the ABA is an organization open to all attorneys and dedicated to the law, legal system, and administration of justice. However, the judge may not serve on the House of Delegates of the ABA, may not participate in advocacy activities of the ABA, and must continually reevaluate the ABA, and any organization's, activities to ensure membership remains in compliance with the Code of Judicial Conduct.