

Opinion 07-06
November 16, 2007

Topic: Propriety of judge presiding over a "Teen Court" proceeding.

Digest: A judge should not preside over a "Teen Court" proceeding if the judge would be called upon to determine guilt or the imposition of sanctions or disposition of participating youth defendants. A Judge may, however, serve as a judge for, or participate in a "teen court" or youth court program, provided the judge's role is advisory and supervisory only. Even if the judge's participation is advisory, a judge may nevertheless be required to disqualify him or herself in the event of a subsequent prosecution of the minor (resulting from the minor's failure to successfully complete or comply with the "teen court" or youth court disposition).

References: Illinois Supreme Court Rules 63C, 63D, 64A, 65B and 65E; Delaware Judicial Advisory Committee Opinion 2001-01; Texas Committee on Judicial Conduct, Opinion 273 (2001).

FACTS

A judge is asked to portray a judge in a "teen court" proceeding. Although not specifically described in the inquiry, most youth courts are diversion programs in which youth sentence their peers for minor crimes and other violations. They may handle cases that otherwise would be eligible for prosecution in juvenile court, traffic court, or a school's disciplinary process. Although Illinois law sanctions youth courts and allows for local government creation of them (See, 705 ILCS 405/5-315 (county board or municipality may create or contract for teen court programs)) they are not formal courts. In many youth court programs, those who complete their youth court sentence avoid prosecution of a criminal or ordinance violation.

Depending upon which of the many approaches is followed, young people may take on the roles of judge, prosecutor, defense attorney, community advocate, defense

advocate, juror, bailiff, or clerk. In most cases, young people must admit their wrongdoing or plead no contest to be eligible for youth court. In a few cases, youth courts also determine guilt. Parental consent is required for participation in youth court.

A variety of dispositional options are generally allowed including community service hours, educational classes, mediation, restitution, apology, essays, counseling, curfew, drug testing, school attendance, peer discussion groups, and other alternative dispositions.

Although some youth courts have an attorney or other adult serve as the judge, apparently the court program involved in the inquiry would utilize a circuit or associate judge for that role. Generally the teen or youth jurors would decide the appropriate sanction or disposition, but that is not entirely clear from the inquiry.

OPINION

Rule 64 provides:

A Judge, subject to the proper performance of his or her judicial duties, may engage in ... law-related activities, if in doing so the judge does not cast doubt on his or her capacity to decide impartially any issue that may come before him or her.

Under this general rule a judge may:

Speak, write, lecture, teach (with the approval of the judge's supervising, presiding, or chief judge), and participate in other activities concerning the law, the legal system, and the administration of justice.

In terms of a judge's extracurricular activities, Rule 65B, also provides that a "judge may participate in civic ... activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties." Subsection (1) of Rule 65B, however, cautions that:

A judge should not serve if it is likely that the organization will be engaged in proceedings that would

ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

Rule 65E, dealing with extra judicial activities, also prohibits a judge from acting as an "arbitrator or mediator."

Teen or youth courts, in addition to serving as diversionary programs for youthful offenders, are also involved in promoting education and understanding of the legal system for the other youth participants. A judge's involvement and participation in the program would appear, generally speaking, to be within the scope of permitted extra judicial activities under Rules 64A and 65B.

The crux of this inquiry, however, will be very fact dependent and specific to the exact role played by the judge for the teen or youth court. If the judge is merely an advisor for the program or is merely serving in the role of presiding over the procedural aspects of the program, there would appear to be no conflict or violation of these rules (subject to the other admonishments discussed below). See, Del. Judicial Ethics Advisory Committee Opinion 2001-01 (2001). See also, Texas Committee on Judicial Conduct, Opinion 273 (2001). This would be the case, for example, where the youth court judge is serving in an advisory or an oversight position regarding the "court" procedures and the youth jurors make the decisions regarding guilt or innocence or determine the appropriate punishment or sanctions.

The Delaware Judicial Ethics Advisory Committee found that a judge merely serving in a supervisory or advisory role would not be acting as an "arbitrator or mediator" as those words were commonly understood. (Delaware Judicial Ethics Advisory Committee Opinion 2001-01). That opinion referenced the definitions from Black's Law Dictionary for those terms. The definition of arbitrator is a "private, disinterested person chosen by the parties to a disputed question, for the purpose of hearing their contention, and giving judgment between them." *Black's Law Dictionary*. Mediator is defined as "one who interposes between parties at variance for purpose of reconciling them." (Black's Law Dictionary). If actually determining guilt or imposing a sanction, a judge in a youth court setting would be arbitrating or mediating the matter that is submitted for

the diversionary disposition. Such a role in any teen or youth court is prohibited. (Rule 65E)

Assuming the role of the judge is limited to an advisory and educational role, there are still factors which could prohibit a judge's participation.

Specifically, a judge should not participate, if participation would "cast doubt on his or her capacity to decide impartially" any issue or case that might come before him or her. Since the teen or youth court is essentially a diversionary program for lesser offenses or infractions committed by minors, it is possible (depending upon the structure of the program) that an offender who fails to comply with the teen court disposition would be subject to eventual prosecution in a juvenile delinquency proceeding or juvenile traffic court docket. Obviously, if a judge has presided, even in an advisory role, over teen court proceedings where a minor has admitted or been determined guilty of an offense, the judge's ability to impartially decide or preside over a subsequently filed delinquency or juvenile traffic charge involving the same events or occurrence could reasonably be questioned or doubted.

This potential problem could be remedied by the judge disqualifying himself or herself under Rule 63C or following the remittal procedures outlined in Rule 63D. In many instances the problems presented by this inquiry might be nonexistent for a judge who does not hear or preside over juvenile court or a juvenile traffic docket. A judge who does handle such cases could deal with the potential conflict, as noted above, by disqualification. However, if the disqualifications were numerous, participation in such a youth court program might reach a point of interfering with "the performance of the judge's judicial duties." See, Rules 64 and 65B. Judges in rural counties, with a single circuit judge assigned to handle all cases, should also be sensitive to the problems that such recusals create, as related to the interference with judicial duties restriction of their right to participate in extra judicial activities.

CONCLUSION

"Teen Court" programs can serve an important role in promoting education and greater understanding of the law

and the legal system. Judges may, therefore, properly participate in such programs under Rule 64, provided the participation is supervisory or advisory only. However, a judge should not preside over a "Teen Court" proceeding if the judge would be called upon to determine guilt or the imposition of sanctions or disposition of participating youth defendants. Even if the judge's participation is advisory, a judge may nevertheless be required to disqualify him or herself if the judge's participation in the "teen court" would cast doubt on the judge's ability to decide issues impartially, or if the judge's participation would lead to repeated recusals that interfere with the judge's judicial activities.