

Need Volunteers

The MCBA Paralegal Division is in need of volunteers with experience in the following areas to mentor entry-level paralegals:

- Construction Law
- Corporate Law
- Criminal Law
- Environmental Law
- Immigration
- Intellectual Property
- Workmen's Comp

Mentoring requires a minimum commitment of 1-2 hours per month. In addition, a little more time may be required during the first month to become familiar with the requirements of the program. For more information or to volunteer, please contact NJ@NJFranco.com. ■

SUBMISSIONS POLICY:

Members and non-members are encouraged to submit articles for publication. The editorial deadline for each issue is generally the 8th of the month preceding the month of issue.

Q&A



LAWYER LIABILITY AND ETHICS

Federal Judicial Ethics Committee's Misguided Priorities



Joseph Brophy

In January, at the Committee on Codes of Conduct of the U.S. Judicial Conference, fifteen federal judges that issue advisory ethical opinions to the federal bench, announced it is considering a ban on judges being members of the Federalist Society and American Constitution Society (ACS) because those groups are too political. What a relief that apparently all the big problems with the federal court system have been resolved so federal judges can concern themselves with issues like this.

The Committee's draft advisory opinion is titled "Judges' Involvement With the American Constitution Society, the Federalist Society, and the American Bar Association." It would bar judges, law clerks, and staff attorneys from serving "as a member or in a leadership role" of the ACS or the Federalist Society. The Committee believes that official affiliation with either organization could convey to a reasonable person that the affiliated judge endorses the organizations' views/ideology, thereby calling into question the judge's impartiality on subjects as to which the organization has taken a position, thereby frustrating the public's trust in the judiciary. The Committee claims that "changing circumstances" and "evolving public perception" warrants this policy. But the Committee never reveals what those circumstances are, how they changed, or the source of the Committee's knowledge of "public perception."

The draft opinion exempts the ABA while admitting that it "has, at times, advocated for particular constituencies, causes, or agendas, which has raised questions of partiality or the appearance of partiality." Reasonable minds may disagree over the meaning of "at times," but it is disconcerting that the Committee appears to be unaware of the ABA's 129-page list of "Legislative Policies of the American Bar Association," or that the ABA has a lobbying organization to advance its policy preferences. The Committee distinguishes the ABA in that "the ABA's mission, unlike that of the ACS or the Federalist Society, is concerned with the improvement of the law in general and advocacy for the legal profession as a whole." The advisory opinion does not explain how the Committee concluded that the ACS and Federalist Society are unconcerned with improvement of the law.

Does anyone believe that federal judges' membership in these organizations presents an ethical problem crying out for a solution? Would membership in those organizations make the top-20 of any attorney's list of problems that the federal judiciary needs to rectify? Are the fifteen judges on the Committee aware that it is not uncommon for a summary judgment motion to sit on a district court's docket for two years before the court issues a ruling? Fee applications routinely take about a year. Where is the solution for those problems—the

kind that affect litigants? How many motions or appellate briefs languished while the federal judges on the Committee determined the public's perception of the ACS?

The brutality and general stupidity of the confirmation process used to be limited to Supreme Court nominees but has spread to circuit court nominees in recent years. Although the Committee states that its advisory opinion should not be interpreted as raising ethical concerns for judicial nominees who belong to the ACS and Federalist Society, it is, to be generous, improbable that the Senate would not use the proposed rule as a cudgel against judicial nominees. Banning judicial membership in organizations with which many nominees associate will make the process more political, not less, as Senators are given a new weapon with which to impugn a nominee's qualifications by raising affiliation with organizations that the public knows little about and which shed little light on how a judge will decide the vast majority of cases. Moreover, the Committee's standard can be applied to numerous other legal organizations that take political positions and would lead to more requests for recusal of judges based on organization membership.

Federal judges do not reach the bench by immaculate conception. The confirmation process is inherently political. Judges are nominated by a president from one of the two major political parties on the usually educated and correct assumption that the judge's political views and judicial philosophy mirror that of the president. Every litigant knows these facts and accepts them, which is why the Committee's attention to the ACS and Federalist Society is misplaced. The Committee should drop this solution in search of a problem or, at a minimum, explain how they concluded that federal judges are suddenly an accurate gauge of the public's perception of the judiciary as opposed to the Congress, which has repeatedly rejected similar constraints on federal judges in recent years. ■

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WRITE A REVIEW

Write a CLE review and get the CLE on the house (up to 1.5 hours max)!

Contact Laurie Williams at lwilliams@maricopabar.org for information.

HELP THE BUNNIES!






April 11, 2020

8:30AM-11:30AM

Tranquility Trail
7741 East Gray Road, Suite 2
Scottsdale, AZ 85260

Volunteers will clean bunny suites, prepare the play area for bunnies, rotate the bunnies for play time, prepare crafts and activities, make toys for bunny supply boutique and restock the store.

TO REGISTER

Please email Rose Reynolds at rreynolds@roselawgroup.com

ABOUT TRANQUILITY TRAIL

Tranquility Trail Animal Sanctuary is a non-profit, 501(c)3 organization dedicated to the compassionate care of companion animals. They offer exceptional programs of rescue, spay/neuter, rehabilitation, adoption, sanctuary, holistic care, community outreach and education, pet parenting support and collaborative partnerships. Their world renowned youth programs include summer camp, leadership training, reading programs, job training programs, internship programs, therapy sessions for children with social anxiety, fear of animals and much more. Tranquility Trail does not receive any federal or state funding.