



Official Opinion of the ASUW Judicial Council

Concurring Opinion handed down on October 20, 2015 by the following Justices:

Chief Justice Manown, Associate Justices Hull, Rams, Ryan, and Yang. Associate Justice Terrell
Appeared Telephonically

Associate Justice Westover, absent

The matter before the Judicial Council (JC) in this complaint is an important one as a correct and proper interpretation of our working documents will determine not only the future of this bodies involvement within ASUW, but also stands to conversely effect the legitimacy that we hold within the other branches of ASUW and the student body at large. President Schueler has asked us to determine “over which events, meetings, and activities are permissible for ASUW Justices to take part in”, as well as “the extent to which these two clauses prohibit interaction.” (Referencing Article VII, Section 1, A. and Article VI, Section 1, F.)

The complaint presented to the Council, was however, given with the language from an older and subsequently incorrect version of the ASUW Constitution. The Constitution was updated by Senate Bill #2425 (passed 4/8/14 signed 4/10/14), and the Council’s opinion was rendered on the language reflected in that Bill.

The clauses in question specifically state that, “Members of the Judicial Council may not appear before the ASUW Senate, participate publically in any debate, or decision pending approval of the ASUW Senate, or have excessive interactions with the ASUW Senators on any business before the ASUW Senate, unless such debate, decision, or business has the potential to directly impact the workings or responsibilities of the Judicial Council or its Justices,” (Article VII, Section 1, F) and “regardless of their fee paying student status, members of the Judicial Council may not author or sponsor legislation due to their association.” (Article VI, Section 1, A)

We interpret the two clauses as prohibiting members of the JC from participating in the process of legislative creation, as the possibility exists of a review of that creation may occur at which time they would no longer be viewed as unbiased. We do not however interpret among them the inability for JC members to attend Senate meetings, committee meetings, or ASUW functions. We believe that it would behoove JC members to stay abreast of the issues facing ASUW, so that upon review a context for adjudication may be present. While the romantic idea of *tabula rasa* review is

before us, an appellant body both in the traditional justice system as well as ourselves, must view decisions in light of the situations that bring them to us. To do otherwise would open our body up to the possibility of verdicts based purely on technicalities that may contradict our charged duties of true interpretation.

Beyond these pragmatic reasons we have the unique opportunity to look to the United States government as a model and source of precedence from its structure. It is common to look to the United States Supreme Court as they are the chief appellant body in the system as are we, if by no other virtue than being the only body of review. The Supreme Court is not precluded from visiting Congress if they so wish, for it does not bias them to witness legislation being created, much as it should be expected of the JC that witnessing the creation of legislation in the ASUW Senate does not hinder our ability to adjudicate responsibly, provided that JC Justices conduct themselves in the Gallery of the Senate and Committee meetings with the utmost professionalism, holding themselves to the high standards of their office and avoiding gestures, whispers, note passing, and the like as such may impact Senators in their decision.

However, in Article VII, Section 1, F, it clearly states that the JC may have a voice if the "...debate, decision, or business has the potential to directly impact the working or responsibilities of the Judicial Council or its Justices." In the event a piece of legislation directly has the potential to impact the JC, the full JC or its members may be present at any Senate hearing, committee meeting, or the like. This is to be construed that the JC or its members may request time to be yield in order to address the legislation directly, in accordance with *Robert's Rules of Order*.