

Nebraska Ethics Advisory Opinion 02-3

Questions Presented--

(1) Does the Code of Judicial Conduct allow a judge to author a “recruiting” letter for the Nebraska State Bar Association’s “One Hour of Sharing” campaign? (2) Does it make a difference that this campaign seeks either “hours of service” or cash contributions “in lieu of services” from Nebraska attorneys? (3) Does the Code of Judicial Conduct prohibit a judge from providing the Nebraska Legal Services agency with a statement or quote for use in its fund-raising pamphlet where the quote will be a general statement regarding the necessity and importance of the provision of civil legal services for low-income citizens?

Conclusion

The Code of Judicial Conduct does not allow a judge to author a “recruiting letter” for the Nebraska State Bar Association’s “One Hour of Sharing” campaign. It makes no difference that the campaign seeks either “hours of service” or “cash contributions in lieu of services” from Nebraska attorneys, both are prohibited. The Code of Judicial Conduct further prohibits a judge from providing the Nebraska Legal Services agency with a statement or quote for use in its fund-raising pamphlet, even though the quote will be a general statement regarding the necessity and importance of the provision of civil services for low-income citizens.

Statement of Facts

A member of the Nebraska judiciary has requested an opinion regarding the propriety of giving the judge’s support to two Nebraska programs which provide civil legal services to low-income citizens of this State.

First, the Nebraska State Bar Association has asked that the judge author a “recruiting” letter to all members of the State Bar Association to encourage participation in its “One Hour of Sharing” campaign. Participation in that campaign includes either (1) performance of pro bono services for low-income clients or (2) donation of funds “in lieu of services” to the campaign.

Second, the judge has been asked by Nebraska Legal Services (a nonprofit legal services organization) to provide a brief statement or quote in support of the low-income legal services offered by the organization for use in its upcoming fund-raising pamphlet.

Applicable Code Sections

The following Canons of the Nebraska Code of Judicial Conduct apply to the above-described situation:

Canon 2A provides: “A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Canon 2B in pertinent part provides: “A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.”

Canon 4 is entitled “A Judge Shall So Conduct All Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations,” and provides in part:

A. Extra-judicial Activities in General. A judge shall conduct all of the judge’s extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Canon 4C(3)(a) provides:

A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization will be engaged frequently 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.

Canon 4C(3)(b) provides:

A judge as an officer, director, trustee, or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund raising and may participate in the management and investment of the organization’s funds, but shall not participate personally in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority.

....

(iii) shall not participate personally in membership solicitation if the solicitation reasonably might be perceived as coercive or, except as permitted in Section 4C (3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund raising or membership solicitation.

References in Addition to Nebraska Code of Judicial Conduct

Arizona Advisory Opinion 00-06

Florida Advisory Opinion 2000-6

Florida Committee on Standards of Conduct Governing Judges Opinion 88-31

Florida Committee on Standards of Conduct Governing Judges Opinion 97-6

Maryland Advisory Opinion 124 (1996)

Michigan Advisory Opinion J-7 (1998)

Nebraska Ethics Advisory Opinions 98-4, 00-1, and 01-1

Nevada Standing Committee on Judicial Ethics and Election Practices Amended Opinion JE 99-01

New York Judicial Advisory Opinion 93-74

West Virginia Advisory Opinion (March 10, 2000)
Jeffrey M. Shaman et al., *Judicial Conduct and Ethics*, § 9.05 at 294 and § 9.06 at pages 295-297
(3d ed. 2000)

Discussion

This committee has previously provided advisory opinions regarding the permissibility of a judge writing a letter of support for a funding grant on behalf of a victim assistance, or CASA (Court Appointed Special Advocate), agency based on the judge's personal knowledge (but not direct participation in fund-raising). See Nebraska Ethics Advisory Opinion 98-4. It also advised of the nonpermissibility of participating in a nonprofit fund-raising event (attendance allowed as nonhonoree, where his/her name and title does not appear in literature advertising the event). See Nebraska Ethics Advisory Opinion 00-1. Further, it advised of the permissibility of a judge to appear and speak before an advocacy group such as MADD (Mothers Against Drunk Drivers), provided the judge did not engage in behavior which amounted to an implicit endorsement of the organization's goals or policies such that the judge's partiality could be reasonably questioned. See Nebraska Ethics Advisory Opinion 01-1.

In the present fact situation, the judge's participation in the Nebraska State Bar Association's (hereinafter NSBA) "One Hour of Sharing" campaign to solicit bar members to contribute hours of service or cash contributions in lieu of services to provide civil legal services to low-income citizens is a violation of Canons 2A and 2B, 4A, 4C(3)(a), and 4C(3)(b)(i), (iii), and (iv). The judge's participation in the Nebraska Legal Service's (hereinafter NLS) fund-raising pamphlet by providing a supportive quote is also in violation of Canons 2A and 2B and 4A and 4C(3)(b)(iv).

In both instances, it is apparent that each organization seeks the judge's support because of the prestige of the judicial office, which is in violation of Canons 2B and 4C(3)(b)(iv).

Additionally, each organization's request amounts to leveraging the judge's title and influence to solicit funds or pro bono legal services. NSBA seeks a supportive letter from the judge on his official stationery. NLS requests a supportive statement or quote from the judge in its fund-raising pamphlet identifying the judge by his judicial title. Canons 2B and 4C(3)(b)(iii) and (iv) prohibit the judge from such participation. See Nebraska Ethics Advisory Opinion 00-1.

Other jurisdictions have addressed similar issues. The majority of the ethics opinions state, in spite of the laudatory goal to provide pro bono legal services to indigent clients, that a judge may not author a letter or solicit pro bono work, or alternately cash contributions in lieu of services, or participate in fund-raising. In addition to the Canons cited above, the prohibition flows from the perception that the judge's recruiting endorsement may be perceived as coercive and the attorney receiving the letter or pamphlet may be inclined to respond favorably due to the judge's position. Moreover, attorneys and litigants may feel that the judge is partial toward the indigent client and his or her attorney when represented by a participating member of the NSBA campaign or NLS. See, Arizona Advisory Opinion 00-6; Florida Advisory Opinion 2000-6 (further noting that situation was aggravated because judge writing letter is chief judge of circuit); Florida Committee on Standards of Conduct Governing Judges Opinion 88-31 (1998); Florida Committee on Standards of Conduct Governing Judges Opinion 97-6; Nevada Standing Committee on Judicial Ethics and Election Practices Amended Opinion JE 99-01.

In another but fundamentally different instance, a judge was allowed to be quoted in support of Adoptive Families of America, Inc., where all reference to judicial status is omitted and the report is not used for fund-raising purposes. See New York Judicial Advisory Opinion 93-74.

In a more similar request, a judge was prohibited from providing a letter to all attorneys in the judge's county requesting pro bono legal services to victims of domestic violence. See West Virginia Advisory Opinion (March 10, 2000).

In contrast, one jurisdiction opines that a judge may engage in activities that promote and encourage attorneys to provide pro bono legal services provided the judge not directly solicit individual attorneys to provide such service to specific persons. See Michigan Advisory Opinion J-7 (1998).

Similarly, a jurisdiction opines that judges of a circuit court collectively may ask individual attorneys to agree to handle one pro bono case a year. It also advised that the same judges may advertise in the local bar newspaper or appear at a group meeting of the bar to solicit volunteers for pro bono services. It further advised that a judge may personally ask an attorney to volunteer for pro bono services. See Maryland Advisory Opinion 124 (1996).

In the present situation, the judge's requested participation appears to be for charitable purposes to assist low-income persons with civil legal services via NSBA or NLS. However, based on the literature provided and committee experience, these same clients and attorneys do and will appear in civil litigation in Nebraska's county, district, and juvenile courts, as well as the Court of Appeals and Supreme Court. Regarding this situation, Shaman's treatise provides:

A judge must limit charitable activities so as to avoid any adverse reflection on his or her impartiality, and the involvement must not interfere with the performance of judicial duties. Furthermore, judges must refrain from service in organizations that are likely to come before the judge's court or that are otherwise frequent litigants, and judges must not participate personally in fundraising activities.

Jeffrey M. Shaman et. al., *Judicial Conduct and Ethics*, § 9.05 at 294 (3d ed. 2000).

Canon 4C(b)(i), (iii), and (iv) prohibit a judge from personal participation in solicitation of funds; from personal participation in membership solicitation (when essentially a fund-raising mechanism) which reasonably might be perceived as coercive; and from the use of the prestige of judicial office for fund-raising or membership solicitation. The Shaman treatise further clarifies these ethical prohibitions:

The purpose of the prohibition is to avoid misuse of the judicial office. The rule addresses the dual fears that potential donors either may be intimidated into making contributions when solicited by a judge, or that they may expect future favors in return for their largesse. The possibility of corruption in fund raising is remote, although not unknown. In either case, the dignity of the judiciary suffers, and, since most charitable organizations can raise funds perfectly well without the involvement of judges, a broad prohibition was deemed appropriate.

Shaman et al., *supra*, § 9.06 at 295.

Furthermore, it makes no difference that the NSBA campaign seeks either "hours of service" or cash contributions "in lieu of services" from Nebraska attorneys. As recently opined

in Arizona, “Adopting the adage that ‘time is money,’ at least with respect to professional services by attorneys, we see no meaningful distinction between judicial solicitation of funds and of time from lawyers.” See Arizona Judicial Ethics Advisory Opinion 00-06.

Accordingly, the member of the Nebraska judiciary is advised not to author a recruiting letter for the NSBA’s “One Hour of Sharing” campaign nor provide a statement or quote for NLS’ fund-raising pamphlet regarding the necessity and importance of providing civil legal services for low-income citizens.

Disclaimer

This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization requesting the opinion pursuant to appendix A of the Nebraska Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Ethics Advisory Committee.

APPROVED AND ADOPTED
BY THE COMMITTEE ON FEBRUARY 11, 2002

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