

Nebraska Judicial Ethics Opinion 05-3

Questions Presented--

- (1) *Can a newly appointed judge continue to serve as director of a religious foundation which does not solicit funds?*
 - (2) *Does the foundation's requirement that its board members also be members of a specific religious affiliation or denomination prohibit the judge from continuing to serve on its board of directors?*
 - (3) *May a judge offer legal advice to the board of directors, if called on to do so?*
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Conclusion

The foundation is a nonprofit, religious foundation and the judge's participation as a member of its board of directors does not involve either impermissible fundraising or a specific function as a legal advisor. Unless the organization is engaged in frequent adversary proceedings in the court where the judge sits, the judge's service on the board of the foundation does not violate the Nebraska Code of Judicial Conduct (Code). The foundation's requirement that its board members be of a particular religious affiliation or denomination does not prevent the judge from continuing to serve. The judge, however, may not act in any capacity as a legal advisor to the foundation or provide any legal advice to the foundation.

Statement of Facts

A newly appointed judge has been a member of the board of directors of a nonprofit religious foundation since its creation in the mid-1990's. The foundation's assets consist of invested funds, the income of which is awarded in grants to various congregations of a specific religious affiliation or denomination within the State of Nebraska, limited to programs which benefit children. Board members are not paid for their services, nor does the board solicit funds for its purposes. Each board member must be a member of the specific religious affiliation or denomination by which it was established.

Applicable Code Sections

Neb. Code of Jud. Cond., Canons 2, 4, and 5

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Judicial Ethics Opinion 97-3

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

Discussion

The Code permits the judge to serve as an officer or director of a charitable organization (religious organization), except those that are (1) likely to be engaged in proceedings that would ordinarily come before the judge or are regularly engaged in adversary proceedings in any court or (2) conducted for the economic or political advantage of its members. Canon 4B; Canon 5B. The Code encourages judges to participate in "educational, religious, charitable, fraternal, or civic organization[s] not conducted for profit." Canon 4C(3). Canon 4C(3) specifically permits judges to participate in such activities and authorizes service as an officer or director of a charitable, religious, or other organization, subject to certain restrictions. A judge must limit charitable activities so as to avoid an adverse reflection on his or her impartiality. Any

involvement must not interfere with the performance of judicial duties. A judge must refrain from service in organizations that are likely to come before the judge's court or are otherwise frequent litigants, and a judge must not participate personally in fundraising activities. Canon 4C(3)(b). The board of directors of the organization of which the judge is a member does not solicit funds. Should the organization initiate fundraising solicitations, the judge should not participate nor allow the judge's name to appear on the letterhead of the organization when the stationery is used to solicit funds.

The Code does not prohibit a judge from participating as a member, officer, or on the board of directors of any nonprofit educational, religious, charitable, fraternal, or civic organization that requires its members or board members to be a member of a specific religious affiliation or denomination. The commentary to Canon 4A states: "Judges should not become isolated from their community." Although the Code does limit a judge's ability to participate in certain types of extrajudicial activities, the Code does not require a cessation of all participation in community activities, including the activity of which the newly appointed judge is involved. In the matter now before the Committee, there is no indication that the judge is engaged in any inappropriate fundraising or other activity that would prohibit his continuing participation as a member of the board of directors of this nonprofit organization.

The judge may not practice law or provide legal advice to any association, foundation, nonprofit association, or other group. This prohibition extends to services for hire or services without compensation. In public service of the nature described, a judge must refrain from responding to any inquiry that may tend to produce legal advice on any issue that comes before this non-profit corporation and respectfully decline to answer such inquiries or act in the capacity of a legal advisor.

The commentary to Canon 4C advises that the changing nature of some organizations and of their relationship to the law makes it necessary for a judge to regularly examine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue his or her relationship with it.

Disclaimer

This opinion is advisory only and is based on the specific facts and question submitted by the person 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 Judicial Ethics Committee.

APPROVED AND ADOPTED
BY THE COMMITTEE ON JULY 19, 2005

*Judge John F. Irwin
Judge Douglas F. Johnson
Judge Stephen R. Illingworth
Judge John F. Steinheider
Judge Carlton E. Clark
Judge John A. Colborn
Judge Robert B. Ensz*