

# Nebraska Judicial Ethics Committee Opinion 12-4

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## ***Question Presented--***

*May a clerk magistrate accept donations from a community fundraiser to help defray her extensive medical bills because of illness?*

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## **Conclusion**

No. Clerk magistrates, like judges, are prohibited from soliciting funds at a fundraising event regardless of purpose. However, nothing in the Nebraska Revised Code of Judicial Conduct prevents the clerk magistrate's spouse, family members, or others from accepting money by another method that may be used to defray these medical expenses if certain safeguards are in place that avoids the appearance of any impropriety.

## **Statement of Facts**

A clerk magistrate is ill and has incurred extensive medical expenses. Her community wants to hold a fundraiser to help defray these expenses. However, because of her position as a clerk magistrate, there are concerns that any type of fundraising effort is a violation of the Nebraska Revised Code of Judicial Conduct.

## **Applicable Code Sections**

Neb. Rev. Code of Judicial Conduct, Application I (A), Canon 3 (§ 5-303.0), § 5-303.7, and § 5-303.13

## **References in Addition to Nebraska Revised Code of Judicial Conduct**

Kansas Judicial Ethics Advisory Opinion JE 166 (Oct. 14, 2008)

## **Discussion**

Clerk magistrates are bound by the Nebraska Revised Code of Judicial Conduct. See Application I(A). The prior Code and the revised Code have clearly stated that judges and clerk magistrates cannot solicit funds as part of any fundraising activity, "but if the event serves a fund-raising purpose, the judge may participate only if the fund-raising is incidental or the event concerns the law, the legal system, or the administration of justice; provided participation does not reflect adversely on the judge's independence, integrity, or impartiality." See Section § 5-303.7(A)(4). See, also, Canon 3 (§ 5-303.0).

There are, unfortunately for this issue, no exceptions to this requirement. However, the Code does not apply to everyone and it may not prohibit a different option available to assist the clerk magistrate and her family. A similar issue arose in Kansas. There, a judge's wife gave birth to a child who died 1 month later. The night before the child's funeral, the judge's wife suffered a heart attack resulting in open-heart surgery and the necessity of placing her on a heart transplant list. These medical issues required her to reside in a major metropolitan area for up to a year, and her medication expenses were \$5,400 per month. In addition, to be on the transplant list, she had to demonstrate adequate financial means to address the oncoming expenses. A fund was established at a local bank for the benefit of the judge's wife. The ethics advisory committee concluded that a judge could not be involved with such an effort. However, the opinion stated, "It would not be improper for court personnel, lawyers who are not judges, or any other community

members to join together to solicit support for the medical benefit of the judge's spouse." See Kansas Judicial Ethics Advisory Opinion JE 166 (Oct. 14, 2008).

The aforementioned Kansas opinion also discussed the concern that lawyers who may appear before the judge would be contributing to the fund. The committee concluded that these donations were permissible as long as the judge reported such contributions "in the same manner as a judge reports a gift." Nebraska's current Code directs a judge not to accept "any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality . . . . [A] judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15 . . . . gifts, loans, bequests, benefits, or other things of value from any source other than a member of the judge's family." § 5-303.13. In these circumstances, the clerk magistrate would have to decide if accepting such funds "would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." See *id.*

This Committee is limited in its ability to respond due to the specific nature of the question presented and is not advocating a particular solution. There may be other options available that do not place the clerk magistrate in an ethical dilemma. However, based upon the question presented, a fundraiser which includes the participation or mention of the clerk magistrate is impermissible.

#### **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 Revised 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 MAY 22, 2012.

*Judge Lawrence D. Gendler  
Judge J Russell Derr  
Judge Linda S. Caster Senff  
Judge Max J. Kelch  
Judge Edward D. Steenburg  
Judge Vicky L. Johnson*