

Nebraska Judicial Ethics Committee Opinion 23-1

Questions Presented--

Does a judge who is on the Board of Directors for a non-profit organization have an affirmative duty to stop other Board members from referring to her as “Judge” during meetings and out in the community? Is the judge allowed to participate in fundraisers, including donating to them, as long as she does not solicit donations, speak at the event, or hold herself out as a judge? Can the judge be listed on the non-profit organizations’ website as being a member of the Board of Directors by name only (no title) and with a quote about the organization?

Conclusion

The judge has no affirmative duty to make a formal request to the other Board members that they not refer to her as judge *except that* the judge should ensure that other Board members are not using her title to advance the economic or other interests of the non-profit organization, such as to recruit members or solicit contributions.

The judge may golf at the events, purchase dinners and tables for dinners, bid on auction items, and make donations, as long as it will not lead to her frequent disqualification. The judge may also assist in the “behind-the-scenes” planning of events. The judge may also purchase raffle tickets subject to the considerations contained within this opinion.

To avoid the appearance that the judge is soliciting donations, the judge should remove her name, photograph, and quote from the website.

Statement of Facts

The party requesting the opinion is a separate juvenile court judge. She has been on the Board of Directors for a local non-profit organization since 2009 (pre-dating her appointment to the bench). The organization’s purpose is to bring diverse groups of young people together to facilitate self-discovery and build community through outdoor adventures.

At Board meetings, other Board members have sometimes referred to her as “Judge,” out of respect. She has not requested to be called “Judge,” but it continues to occur. She is considering making a more formal request to not be referred to by her title during Board meetings and out in the community when referencing the Board’s composition.

The non-profit organization hosts annual events which include golfing, dinners, raffles, auctions, speakers, and fund-raising. The organization sells tables for one of the fundraising events and solicits sponsors. The judge requesting the opinion does not intend to act as a speaker at these events. Furthermore, her name, photograph, and title will not be used on any sponsorship.

Currently, the judge’s name, photograph, and former job description are listed on the non-profit organization’s website.

Applicable Code Sections

Neb. Rev. Code of Judicial Conduct, Canon 1 and § 5-301.0
Neb. Rev. Code of Judicial Conduct, § 5-301.3
Neb. Rev. Code of Judicial Conduct, Canon 3 and § 5-303.0
Neb. Rev. Code of Judicial Conduct, § 5-303.1
Neb. Rev. Code of Judicial Conduct, § 5-303.7

References in Addition to Nebraska Revised Code of Judicial Conduct

Neb. Rev. Stat. §§ 9-501 through 9-513.

Discussion

The applicable Code sections read as follows:

§ 5-301.0. Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

....

§ 5-301.3 Avoiding abuse of the prestige of judicial office. A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

....

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

....

§ 5-303.0 Canon 3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

§ 5-303.1 Extrajudicial activities in general.

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; [or]
- (D) engage in conduct that would appear to a reasonable person to be coercive[.]

....

COMMENT

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

....

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

....

§ 5-303.7 Participation in educational, religious, charitable, fraternal, or civic organizations and activities.

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

- (1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, 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.

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge;
or

(b) will frequently be engaged 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.

....

COMMENT

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations. An organization concerned with the law, the legal system, and the administration of justice may include an accredited institution of legal education, whether for profit or not for profit. A charitable organization may include a private family foundation which exists for charitable purposes.

....

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable,

fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

....

Analysis and Opinion

Others referring to the requesting party as “Judge”

The first question presented is whether the requesting party needs to make a more formal request for other Board members to stop referring to her as “Judge” at board meetings and out in the public when discussing the composition of the Board.

Under Neb. Rev. Code of Judicial Conduct § 5-301.3, it is improper for a judge to abuse the prestige of office to advance the personal or economic interests of the judge or others *or allow others to do so*.

Pursuant to Neb. Rev. Code of Judicial Conduct § 5-303.7, the judge could not herself solicit membership for the non-profit organization. Furthermore, the judge could not solicit contributions for the organization (except for from her family members or from other judges). [The judge requesting the opinion is a separate juvenile court judge who does not exercise supervisory or appellate authority over any other judges.]

Because the judge cannot herself recruit members or fundraise (except as outlined above), the judge should ensure that other Board members are not using her title to do so. As long as the judge is not allowing the other Board members to use her title to advance the interests of the non-profit organization, the judge has no duty to formally request that others refrain from calling her “Judge.”

Attendance at fundraisers

The non-profit organization hosts certain events which serve as fundraisers for the organization. The requesting party wants to know if she is allowed to golf at these events, attend dinners, purchase raffle tickets, bid on auction items, and make donation(s) at these events. The requesting party has reviewed Nebraska Judicial Ethics Opinions 03-5, 06-6, and 09-1, which are summarized below:

In Opinion 03-5, the Ethics Committee opined that a judge may participate as a member of a gala ball committee for a charitable organization, so long as the judge avoids both the direct solicitation of funds and the appearance of impropriety. To avoid the appearance of impropriety, the judge should limit his or her activities for the organization in a way that avoids any implication that he or she is involved in the solicitation of funds. The judge may be able to provide considerable assistance to the group “behind-the-scenes” in helping organize activities. The judge should not be recognized, give speeches, be singled out in any way at any fundraising events, issue press releases related to fundraising campaign(s), or make other public speeches or presentations related to the organization’s fundraising activities.

In Opinion 06-6, the Ethics Committee opined that a judge may participate as a judge in speech contests, pageants, talent shows, scholarship selections, or other similar events sponsored by various non-profit groups or service clubs.

In Opinion 09-1, the Ethics Committee opined that a judge may donate money to a Foundation that he and his wife created. The judge was not permitted to participate personally in the solicitation of funds; furthermore, the judge was not permitted to participate in the annual fundraiser for the local community theater by performing at the event.

Having reviewed the above-listed opinions and the current rules, this Committee offers the following guidance:

The judge may golf at the events, purchase dinners and tables for dinners, bid on auction items, and make donations, as long as it will not lead to her frequent disqualification. The judge may also assist in the “behind-the-scenes” planning of events. She may not, however, solicit contributions from anyone except family members and other judges.

The judge may also purchase raffle tickets and should, as part of her responsibilities as a member of the Board of Directors and in accordance with her ethical obligation not to engage in unlawful extrajudicial conduct, ensure that any raffle is conducted in conformity to the Nebraska Small Lottery and Raffle Act or other applicable law.

Name, photograph, and quote on website

In Opinion 09-1, the Ethics Committee opined that a judge should remove his name and pictures and any reference to his participation in the creation of a foundation from the foundation website if that website is used for the solicitation of funds, finding as follows: “Regarding the Foundation Web site, the judge should remove his name and photographs from the Web site if the Web site is used for fundraising or to facilitate fundraising. Even if photographs are used which do not identify the judge, presumably some people would have knowledge that the person in the photograph is a judge, and that information could be ascertained by others. This would appear to be personal participation in a fund-raising activity....”

To avoid the appearance that the judge is soliciting donations, the judge should remove her name, photograph, and quote from the website.

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 MARCH 1, 2023

*Judge James C. Stecker
Judge Matthew L. Acton
Judge Michael W. Pirtle
Judge Julie D. Smith
Judge Travis P. O’Gorman
Judge Andrew R. Lange*