STATE OF NEVADA
STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES

DATE ISSUED: July 10, 2000

OPINION: JE00-004
***NOTE:* Reversal of prior decisions**

PROPRIETY OF A JUDGE PARTICIPATING IN FUND RAISING FOR PRO BONO ORGANIZATIONS

Issue

A District Court judge has inquired whether judges of this state may become involved in fund raising events to raise funds for legal service organizations providing pro bono services in Nevada. The judges would like to know if they can be listed on an invitation directed to local attorneys asking them to appear at a reception hosted by the listed judges and thereafter attend the event.

Answer: The Committee believes the judges can participate in such fund raising activities to a limited extent.

Facts

This advisory opinion concerns the authority of judges to become involved in fund raising activities on behalf of organizations providing pro bono services in Nevada in an attempt to make lawyers more aware of the aspirational goals of Supreme Court Rule 191. This rule provides that a lawyer should render public interest legal service and that a lawyer may discharge that responsibility by providing a minimum of 20 hours yearly of professional services at no fee, 60 hours of professional services at reduced fees or contributing a minimum of $500 yearly to an organization or group providing pro bono services.

A judge has asked whether she along with other judges and justices may lend their names as hosts to a fund raising event to increase the level of understanding of SCR 191 while also raising funds to distribute to four agencies currently providing legal services in Clark County. The language of the proposed invitation to the event is important to the Committee's decision and is therefore quoted in its entirety as follows:

Hear Ye Hear Ye

You are hereby invited
to attend a reception hosted by
the below named jurists
to informally discuss
SCR 191
and your commitment thereto

Date: September 21, 2000
Place: to be determined

The judge requesting this opinion specifies that only the jurists who agree to have their names included would be printed on the invitation. She states that every judge would be extended the option of participating. She also states that the RSVP would be returned to the judicial district pro bono foundation and not to the inviting judges.

Discussion

The Committee has previously addressed a similar subject in Opinion JE98-002 issued on June 15, 1998. At that time the Committee concluded that a judge may not permit his name to be listed as a member of an

"honorary host committee" on an invitation to a celebrity golf tournament for a national charity. The Committee cited Canon 4C(3)(b)(iv) which at that time treated a judge's involvement in civic or charitable activities identically with the judge's involvement in law-related activities and stated that when acting as an officer, director, trustee or non-legal advisor or as a member or otherwise of any such organization that a judge:

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

The Committee concluded in JE98-002 that a judge was entitled to solicit membership as long as such solicitation was not essentially a fund raising mechanism and the judge "must not engage in direct individual solicitation of funds". For that reason, a judge was not allowed to permit his name to appear on promotional material for a fund raising charitable event.

The Committee then directly addressed the current request in JE99-001 issued on February 9, 1999. A judge serving as an officer of a judicial district pro bono foundation asked whether the judge could sign a letter to attorneys soliciting them to contribute to the foundation as a means of fulfilling their voluntary goal of providing pro bono legal services or monetary donations in lieu thereof. The Committee answered that request "no" based upon Canon 4C(3)(b)(i) as then written which stated:

> "(b) 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 personally participate 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."

In JE99-001, the Committee also noted that the foundation's proposed letterhead conflicted with the commentary to Canon 4C(3) which listed the judge trustees of the foundation by the designation "Hon.", thereby indicating their judicial office but not providing comparable designations for the other members such as "Esq." for attorney trustees or the other professional or occupational designations for the other trustees. The Committee concluded that to comply with the Canon "it is recommended that the 'Hon.' designations for the judge trustees be eliminated or, if feasible, that the other trustees' designations also be listed". Amended Opinion JE99-001, p. 2.

On January 27, 2000 the Nevada Supreme Court entered an order amending the Code of Judicial Conduct. This order was the product of work by a study committee established to review the Code of Judicial Conduct and to make recommendations regarding possible amendments to the Code. As noted in the Court's order:

> "The study committee identified one area which is of particular concern to this Court, that is, the apparent conflict between the Code's provisions governing extrajudicial conduct, and the provisions of Supreme Court Rule 191 requiring judges to address the unmet legal needs of the poor in their respective

judicial districts".

Order, p. 1. Following public hearings and an extensive review of judicial canons of forty-nine other states the Court looked with favor upon those states that allowed judges to participate in civic, charitable and law-related activities but which maintained prohibitions against direct solicitations on behalf of such organizations. The Court concluded that it would follow the lead of various other states in dividing Canon 4 into two sections: one governing a judge's law-related activities and one governing a judge's civic and charitable activities. Order, pp. 2-3.

The Court then adopted several amendments to the Code of Judicial Conduct which are directly relevant to the present request:

1. Canon 4C(3)(b)(i) has been amended to allow a judge to assist a law-related organization in fund raising. While the Court has specifically now amended the rules to state that "a judge may join a general appeal on behalf of a law-related organization", this Canon remains unchanged in its prohibition of personal participation in the solicitation of funds or other fund raising activities. This amendment reverses JE98-002 and JE99-001 only as to the conclusion that judges may not participate in such general appeals.

2. Canon 4C(3)(b)(iii) remains unchanged in its prohibition of membership solicitation "if the solicitation might reasonably be perceived as coercive" or "if the membership solicitation is essentially a fund raising mechanism".

3. The commentary to Canon 4C(3)(b) has been supplemented to provide that "a judge may be listed as a host or member of an honorary dinner committee for an organization's fund raising event". This addition to the commentary and the rule changes discussed above reverse Advisory Opinion JE98-002 but only insofar as the judge is now allowed to be a member of an honorary dinner committee for a law-related organization.

4. The commentary to Canon 4C(3)(b) has also been amended to add this language which deserves quotation in its entirety:

> "The recruitment of attorneys or law firms to provide pro bono legal services pursuant to Supreme Court Rule 191 is not membership solicitation. A judge may assist an organization in recruiting attorneys so long as the recruitment effort cannot reasonably be perceived as coercive. A judge must not engage in direct, individual recruitment of attorneys in person, in writing, or by telephone. A judge may provide an organization with general endorsement or solicitation materials for use in the organization's recruitment materials. Similarly, this section does not preclude a judge from requesting an attorney to accept pro bono representation of a party in a proceeding pending before the judge."

5. The commentary to Canon 4C(3)(b) remains unchanged in its prohibition of organization letterheads which identify only the judge by his or her title "Hon." unless others are designated by their title.

6. The commentary to Canon 4C(3)(b)has been amended to state that "a judge may be a speaker or guest of honor at such an organization's fund raising event".

These are far-reaching changes

adopted by the Supreme Court which will require time to study in practice. However, the Committee believes that the rule changes discussed above provide guidance to the Committee in responding to the present request.

Thus, it is permissible for judges of the judicial district to lend their names as hosts of this proposed law-related reception to encourage membership in and the donation of funds to support designated legal service organizations in Clark County. The addition of judges' names to the proposed invitation quoted above constitutes a "general appeal on behalf of a law-related organization". Canon 4C(3)(b)(i).

However, the Committee disapproves of that portion of the invitation which asks attorneys to attend this reception "to informally discuss SCR 191 and your commitment thereto". The language "and your commitment thereto" might "reasonably be perceived as coercive". Canon 4C(3)(b)(iii) and commentary. The invitation may not refer to the judges by their official designation "Hon." or Judge unless others are also given a title. If only judges are extending the invitation, they may use their title. JE99-001.

The Committee approves of the plan to have the RSVP returned to the pro bono foundation and not to the inviting judges. The Committee cautions judges who attend such an event to be sensitive to the letter and spirit of these Canons as amended. Direct, individual solicitation of attorneys to commit either dollars or volunteer hours to pro bono would be in violation of the Canons. Canon 4C(3)(b)(i), (iii) and the commentary thereto.

Conclusion

The Committee recognizes the desire of many judges to become more involved in law-related activities and particularly in pro bono efforts as a service to their communities to help solve the enormous need for legal representation of all Nevadans. By its amendments to the Code of Judicial Conduct, the Supreme Court has recognized that need and allowed for the first time limited involvement by all judges in fund raising and membership solicitation on behalf of law-related organizations. While judges play an invaluable role in education of the bar as to the beneficial purposes of supporting SCR 191 and while general appeals to the bar encouraging the donation of funds and pro bono hours are allowed, no attorney should feel any direct pressure exerted by a judicial officer while the decision whether to support pro bono is being made.

References

Nevada Code of Judicial Conduct, Canon 4C(3)(b)(i)-(iv) and Commentary.

This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion.

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