PROPRIETY OF JUDICIAL DISTRICT APPointING JUDGES TO SERVE AS MEDIA LIAISON IN HIGH PROFILE CASES

ISSUE

May the judges of a judicial district appoint one of the district judges not hearing the case to serve as a media liaison officer to answer media questions in high profile cases?

Answer: Yes

FACTS

The judges of the judicial district inquire whether they may appoint one of their colleagues not hearing the case to respond to media inquiries concerning legal procedures and/or processes in cases attracting significant media attention.

The judges believe that having a judicial media liaison would provide valuable training and experience for the judges in how to deal with the media in such cases and would build public trust in the court system by providing education as to the operation of that system. The judges propose that the judicial media liaison not critique any aspect of the case but address only legal processes and procedures in response to media inquiries.

The district has experimented with the use of a judicial media liaison in a murder trial which has just concluded. The district provides for consideration by the Committee a media videotape which quotes members of the press as being very satisfied with their access to the designated judicial officer. The district has also provided the Committee with a publication entitled Managing Notorious Trials by the National Center for State Courts which provides guidelines for these cases.

DISCUSSION

The Nevada Code of Judicial Conduct sets forth the applicable standards from which our judges are provided guidance for ethical conduct.

A judge is encouraged by the canons to comment publicly on matters concerning the law, the legal system, the provision of legal services and the administration of justice. Canon 2D.

Canon 3B(9) directly addresses this issue:

"A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any non-public comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity."

Members of the Committee were very positive as to their own observation of the district's judicial media officer in a recently
concluded murder trial. The "speaking judge" was able to provide understanding of the judicial process in a manner keeping with the dignity required of the judiciary and without compromising the fairness of the trial.

The Committee believes the judges of the district are to be commended for appointing a judge who is not trying the case in question, as comments made by the trial judge are much more likely to impact the outcome of the case in violation of Canon 3B(9).

However, the Committee believes that the assignment of a judge to handle media relations is an area requiring great caution. Any judge being interviewed before a battery of television cameras, some beaming their signals on national television and around the world, cannot avoid the temptation to say something newsworthy and/or entertaining in answer to reporters' questions. Because of the judge's position his or her comments to the media must at all times promote public confidence in the integrity and impartiality of the judiciary. Canon 2A.

A judge speaking to the media must also be aware that because of the judge's position of power and prestige, any comments made to the media will have a greater tendency to influence the public than if the comments were made by other nonjudicial members of the court's staff. Thus, while the use of a judge for media relations does not violate the Code of Judicial Conduct, there is such potential to affect the outcome or impair the fairness of a trial that the Committee encourages any judicial district to use nonjudicial administrative staff for such media relations.

If the judges of the district believe that one of their judicial colleagues is best suited for this role, the Committee believes that any such judge should be chosen with care based upon his or her familiarity and experience with the media and with the nature of the case being tried. The Committee also believes that any judicial media officer should have limited contact with the trial judge in order to avoid the temptation of the trial judge communicating with the media in a potentially improper manner through the judicial media representative.

CONCLUSION

Based upon the foregoing Canons, the judges of the district may appoint a judicial media representative as media liaison to serve in high profile trials if the requirements of Canon 3B(9) are scrupulously followed. However, any comments to the media must be general in nature and provide for education and background so that the public might better understand the judicial process and avoid misconceptions of the judiciary and the legal system that have been so prevalent in other highly publicized trials.

REFERENCES

Nevada Code of Judicial Conduct Canons 2A, 2D and 3B(9); Managing Notorious Trials, National Center for State Courts, Copyright 1992

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