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JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY _____
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STATE OF NEVADA

STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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OPINION: JE06-013

PROPRIETY OF A JUDGE, WHO IS ASSIGNED TO MANAGE AND HEAR CASES IN A COMPLEX AND SPECIALIZED AREA OF THE LAW, SERVING ON THE EDUCATIONAL PROGRAM ADVISORY BOARD FOR A PRIVATE, FOR-PROFIT BUSINESS ORGANIZATION WHICH, AMONG OTHER THINGS, CONSULTS WITH POTENTIAL AND ACTUAL LITIGANTS CONCERNING CLAIMS RELATED TO THAT AREA OF THE LAW, AND WHICH ALSO OFFERS EDUCATIONAL SEMINARS FOR PROFESSIONALS INVOLVED IN IT, INCLUDING ATTORNEYS AND JUDGES.

FACTS

A judge asks whether it is appropriate to serve on a program advisory board of a for-profit business organization with respect to educational seminars which the entity sponsors. The entity involved consults with potential and actual litigants concerning claims related to a highly complex and specialized area of the law. The educational seminars involve that area of the law. The judge is one of several judges who are assigned to handle cases in that area of the law. The seminars are attended by professionals involved in, or potentially involved in, such litigation, including attorneys and judges.

ISSUE

May a judge, who is assigned to manage and hear cases in a complex and specialized area of the law, serve as a program advisor to a private, for-profit business organization with respect to educational seminars which that entity sponsors, where the entity consults with potential litigants and actual litigants concerning claims related to that same area of the law?

The business entity and its principals and employees involved here do not, however, represent a particular side in such litigations. When necessary, they do present testimony in such litigation. However, to date, principals and employees of the business organization have not presented testimony in the court of the judge requesting this advisory opinion, or in the court of which the judge is a member. On a regular basis, the entity offers educational seminars for professionals involved in this area of the law, including lawyers and judges. The educational seminars have received approval for continuing legal education credit. The judge has been invited to become a part of the entity's program advisory board to consult on the content of future educational seminars on this area of

ANSWER

No.



the law. The judge will not be paid for this service, but will be reimbursed for reasonable lodging and travel expenses.

DISCUSSION

A number of Canons apply to this request. On the one hand, the request involves the benefits to society and to the legal system which result from the participation of judges in activities related to education concerning the law, the legal system, and the administration of justice. The Code encourages such participation. On the other hand, it brings into play the need to maintain judicial impartiality, and the appearance of judicial impartiality, to maintain the dignity of the judicial office, and to avoid activities that may interfere with the proper performance of judicial duties. Canons 2 and 4 address these sometimes competing objectives.

Canon 2 is concerned with avoiding impropriety and the appearance of impropriety in all activities of a judge. In applicable part, Canon 2B provides that:

A judge shall not lend the prestige of judicial office to advance the private interest of...others; nor shall a judge...permit others to convey the impression that they are in a special position to influence the judge....

Canon 4 requires a judge to conduct extrajudicial activities "as to minimize the risk of conflict with judicial obligations." Canon 4A provides:

A judge shall conduct all of the judge's extrajudicial activities so that they do not:

- (1) Cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) Demean the judicial office; or
- (3) Interfere with the proper performance of judicial duties.

However, the Commentary to Canon 4A cautions that it is "neither possible nor wise" to expect a judge to be completely isolated "from the community in which the judge lives."

Thus, Canon 4B provides:

A judge may speak, write, lecture, teach and participate in other extrajudicial activities concerning the law,* the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code.

The Commentary to Canon 4B recognizes that judges are in unique positions to contribute to the improvement of the law, the legal system, and the administration of justice, and notes that judges are encouraged to do so "either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law." That Commentary notes that Canon 4B and

other sections of Canon 4 use the phrase “subject to the requirements of this Code.” That phrase is used to remind judges that the use of permissive language in one section does not relieve a judge from the requirements of the Code that apply to specific conduct.

Canon 4C(3) authorizes a judge to serve as a “non-legal advisor or an organization or governmental agency devoted to the improvement of the law,* the legal system, or the administration of justice, subject to the following limitations and the other requirements of the Code.” Notably, that section is limited to organizations or governmental agencies devoted to the improvement of the law. It is limited in its application by other requirements of the Code, and by the specific provisions of Canon 4C(3)(a)(i) and (ii) which provide that a judge shall not serve as a non-legal advisor if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge, or will be engaged frequently in adversary proceedings in the court of which the judge is a member.

Similarly, Canon 4C(4) authorizes a judge to serve as a “non-legal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and to the other requirements of this Code.” Importantly, that section is limited to organizations not conducted for profit. Like Canon 4C(3), Canon 4C(4)(a)(i) and (ii) prohibit a judge from serving as a non-legal advisor to such an organization if it is likely that the organization will be engaged in

proceedings that would ordinarily come before the judge, or will be engaged frequently in adversary proceedings in the court of which the judge is a member.

The Committee recognizes the benefits to society and to the legal system which flow from the participation of judges in activities related to education concerning the law, the legal system, and the administration of justice. Without a doubt, the judge here has the training, background and experience to contribute to the development of educational programs which may be highly beneficial to professionals involved in this area of the law, including attorneys and other judges.

However, here we do not have an organization dedicated to the improvement of the law; we do not have an organization not conducted for profit. Even if one of those organizations was involved, the judge could not serve if it was likely that organization would be engaged in proceedings that ordinarily would come before the judge or the court of which the judge is a member.

In this case, the entity here is a private, for-profit business organization which has as a part of its business consulting with potential and actual litigants concerning claims related to matters which would ordinarily come before the judge or in adversary proceedings in the court of which the judge is a member. The fact that it has not happened to this point in time does not minimize the very real risk that it may in the future. Those facts outweigh the benefits which may result from the judge’s

participation on the organization's program advisory board.

It is the opinion of the Committee that the judge should not become a member of the program advisory board because of the need to maintain judicial impartiality, and the appearance of impartiality, to maintain the dignity of the judicial office, and to avoid interference with the proper performance of the judge's duties. Specifically, the Committee concluded that Canon 2B prevents the activity here, in order to avoid lending the prestige of judicial office to advance the private interest of others, and to avoid the impression that a consultant may be in a special position to influence the judge. The Committee also concluded that Canon 4A, particularly when read in conjunction with Canons 4C(3) and 4C(4), prevents the judge from serving here. It is the opinion of the Committee that such service has the potential to interfere with the proper performance of the judge's duties, and to cast doubt on the judge's capacity to act impartially as a judge because of the very real possibility that the consultant in question would be engaged in proceedings coming before the judge or before the court of which the judge is a member.

CONCLUSION

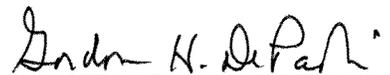
A judge, who is assigned to manage and hear cases in a complex and specialized area of the law, may not serve as an advisor to a private for-profit business organization with respect to educational seminars which the entity sponsors, where the entity consults with actual and potential litigants concerning

claims related to that area of the law, and where the business organization is likely to be engaged in proceedings that would ordinarily come before the judge or before the court of which the judge is a member. In these circumstances, Canon 2B and Canon 4A preclude such service.

REFERENCES

Nevada Code of Judicial Conduct, Canon 2; Canon 2B; Canon 4; Canon 4A; Canon 4B; Canon 4C; Canon 4C(3); Canon 4C(3)(a)(i); Canon 4C(4)(a)(ii); Canon 4C(4); Canon 4C(4)(a)(i); Canon 4C(4)(a)(ii).

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.



Gordon H. DePaoli, Esq.
Committee Chairman