PROPRIETY OF JUDGE PRESENTING A SEGMENT IN THE TRAINING OF RESERVE POLICE OFFICERS ON COURTROOM DEEMANOR.

ISSUE

May a judge present a segment in the training of reserve police officers on courtroom demeanor?

ANSWERS

Yes, with significant qualifications.

FACTS

A judge asks whether it is permissible for the judge to present a segment in the training of reserve police officers on courtroom demeanor. The general training will be conducted by a certified instructor, and will relate to police regulation and standards. The judge will be asked to assist with a segment on courtroom demeanor that may include, but would not be limited to, attire and presentation. A secondary question asked is whether it is permissible to hold the training in a courtroom for demonstrative purposes.

DISCUSSION

Canon 4B states that "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 that Canon recognizes that judges are in a unique position to contribute to the improvement of the law, the legal system and the administration of justice. However, the Commentary specifically notes that in Canon 4B and in other sections of Canon 4 the phrase "subject to the requirements of this Code" is used. The phrase is intended to remind judges that the use of permissive language in various sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

There are other specific provisions of the Code which must be considered here. First, Canon 1 requires judges to "uphold the integrity and independence of the judiciary." Canon 2A requires judges to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Commentary to that section states that a judge must avoid the "appearance of impropriety." The test for appearance of impropriety is "whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Finally, Canon 4A(1) requires that a judge conduct 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: ... or (3) interfere with the proper performance of judicial duties."

In the view of the Committee, there are facts present in this request which raise issues under each of those Canons. The training is for reserve police officers who may at some point appear before the judge, who typically will be on the prosecution side of a proceeding, and who are part of a different branch of government. Those facts, at a minimum, create appearances concerning judicial independence under Canon 1, concerning impartiality under Canons 2A and 4A(1), and concerning interference with the proper performance of judicial duties under Canon 4A(3). See, e.g., Arizona Advisory Opinion 03-08 (2003) (judges participating in training of police officers on how to perform their duties may be in violation of Canon 2A and raise separation of powers issues). In general, it is the Committee's view that courtroom training for police officers is primarily, if not totally, the responsibility of the police and prosecutors.

In addition, "courtroom demeanor" encompasses a wide range of activities which go well beyond proper attire, decorum and the process and procedures followed in the courtroom. For example, Black's Law Dictionary notes that:

Demeanor embraces such facts as the tone of voice in which a witness's statement is made, the hesitation or readiness with which answers are given, the look of the witness, his carriage, his evidence of surprise, his gestures, his zeal, his bearing, his expression, his yawns, the use of his eyes, his furtive or meaning glances, or his shrugs, the pitch of his voice, his self possession or embarrassment, his air of candor or seeming levity.

In the judgment of the Committee, it would be inappropriate for a judge to provide training for reserve police officers which addresses any of those aspects of "demeanor." In the judgment of the Committee, such training by a judge is not allowed under Canon 1, Canon 2A and Canon 4A.

On the other hand, Canon 3A(3) provides that "a judge shall require order and decorum in proceedings before the judge." It is the opinion of the Committee that a judge may provide training on matters which touch and concern those issues, like appropriate attire for the courtroom and the process and procedures followed in the courtroom.

Finally, it is the opinion of the Committee that the Nevada Code of Judicial Conduct is not implicated by the use of a courtroom for such training, whether the judge does or does not participate.
CONCLUSION

Therefore, it is the opinion of the Committee that a judge may participate in training for reserve police officers if the participation is limited to appropriate attire for and the process and procedures followed in the courtroom.

REFERENCES


This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding on 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 requesting the opinion.

Gordon H. DePaoli, Esq.
Committee Chairperson