

FILED

MAR 24 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: DEPUTY CLERK

STATE OF NEVADA

**STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES**

DATE ISSUED: March 24, 2009

ADVISORY OPINION: JE09-003

PROPRIETY OF A NEVADA JUDGE NOT DISCOURAGING A PUBLIC EVENT TO RAISE FUNDS FOR THE MEDICAL TREATMENT OF A FAMILY MEMBER.

also employed by the same county law enforcement agency.

ISSUE

The employees of the law enforcement agency, as well as other members of the community, have announced a public event to raise funds to assist in paying the medical expenses for treatment of the judge's family member. This family member resides in the judge's household.

Must a Nevada justice of the peace decline and urge a family member residing in the judge's household to decline the monetary benefits from a public event for the purpose of raising funds to assist the judge and his family member in meeting the financial obligations for medical treatment for the family member's catastrophic illness?

The ticket price for attending the luncheon is \$10.00 and the event is open to the public. Neither the judge nor the affected family member is involved in promoting the event. The sponsors of the event have instituted procedures whereby the judge will not have access to information concerning the amounts of or identities of contributors of donated funds.

ANSWER

DISCUSSION

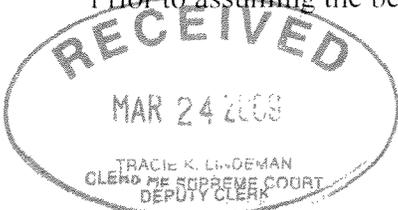
No. Pursuant to Canon 4D(5)(b), a judge and the judge's family member may accept the benefits of gifts incident to the family member's business, profession or other separate activity unless the gifts are of a nature that the judge's faithful performance of his judicial duties could be reasonably questioned.

The Committee is authorized only to render an opinion that evaluates compliance with the requirements of the Nevada Code of Judicial Conduct. *Rule 5 Governing the Standing Committee On Judicial Ethics & Election Practices* Accordingly, this opinion is limited by the authority granted by Rule 5.

FACTS

Canon 4D(5)(b) of the Nevada Code of Judicial Conduct governs the circumstances presented by this opinion request of first impression. That canon states in pertinent part:

A family member of a Nevada justice of the peace who was a former employee of a county law enforcement agency has been diagnosed with a catastrophic illness that will require significant medical treatment and has required that family member to retire. Prior to assuming the bench, the judge was



A judge shall not accept, and shall urge members of the judge's family residing in the judge's household,* not to accept, a gift . . . from anyone except for . . . a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

There is no commentary to Canon 4D(5)(b). That said, the commentary to Canon 4D generally observes that judges must urge family members to exercise caution in accepting gifts because it might be viewed as intended to influence the judge. Moreover, the commentary notes “[a] gift to . . . a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office . . .”

In this instance, acceptance of the monetary benefits of the fundraising event by the judge's family member is within the exception delineated in Canon 4D(5)(b). The benefits of the fundraising event here are “incident to the business, profession or other separate activity of a . . . family member,” which is within an exception to the general rule that gifts must be declined by the judge and the judge must discourage acceptance by a family member. We note that the canon further

recognizes and permits of the incidental benefit conferred on the judge.

Likewise, the ticket price for the event is a modest \$10.00, an amount that taken on an individual basis “could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.” The sponsors of the event have instituted appropriate procedures that would prevent the judge from having access to information about the donors' identities and contributions. Thus the judge will only have knowledge as to the identity of the attendees to the event and that they paid the nominal ticket price. In the event larger donations were made to the cause, the procedure adopted by the sponsors will insulate the judge from knowledge of the otherwise anonymous donors.

Our opinions on Canon 4D generally have considered whether a particular situation conflicts with the core tenets of Canon 4. In that regard, the canon mandates that a judge's extra-judicial activities must 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.

In this instance, we conclude based on the facts given that accepting the benefits of the fundraising event do not implicate these three touchstone principles. The judge's capacity to act impartially in matters that come before the justice court is not placed in reasonable doubt under the facts presented. In this regard, the Committee weighed the preexisting fact as to the identity of the former employer of the judge and the affected family member.

Considering that this is a community event open to the public, we do not view the involvement of the county law enforcement agency as presenting any unique factual situation that would independently call into question the judge's impartiality. The subject and focus of the fundraising event is the catastrophic illness of the judge's family member and the judge is not promoting the event. These facts do not demean the judge's office. The fundraising event and the acceptance by the judge's family of its monetary benefits do not present a situation that of itself interferes with the proper performance of judicial duties and is a circumstance within the language of an affirmative exception to the canon's general rule. We encourage the judge and his family, however, to support the procedures instituted by the event sponsors to preserve the anonymity of donors and to proceed thoughtfully if in the future facts come to the judge's attention that warrant a reexamination of the situation.

CONCLUSION

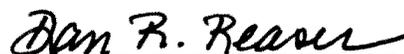
Under Canon 4D(5)(b), a Nevada justice of the peace is not required to decline and to urge a family member residing in the judge's household to decline the monetary benefits of a public fundraising event to assist the judge and his family in meeting the financial obligations for medical treatment for the family member's catastrophic illness. Pursuant to Canon 4D(5)(b), a judge and the judge's family member may accept the benefits of gifts incident to the family member's business, profession or other separate activity unless the gifts are of a nature that the judge's faithful

performance of his judicial duties could be reasonably questioned.

REFERENCES

Rule 5 Governing the Standing Committee On Judicial Ethics & Election Practices; Canon 4A; Canon 4D(5)(b).

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.



Dan R. Reaser, Esq.
Committee Vice- Chairman