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STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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PROPRIETY OF A NEVADA STATE COURT JUDGE SUPPORTING THE FUND-RAISING ACTIVITIES OF A NONPROFIT RESEARCH ORGANIZATION BY PROVIDING AN ANNUAL DINNER SILENT AUCTION ITEM CONSISTING OF A PAID LUNCHEON WITH THE JUDGE.

auction, one or more Nevada judges agree that the jurist will provide (i.e., pay the associated expenses), host and attend a luncheon with the winning "bidder." This organization is apolitical and is not an organization concerned with the law, the legal system, or the administration of justice. Some, but not all, of the judges who have been asked to participate in the silent auction event have close associations with the nonprofit organization and, therefore, desire to support the organization's fund-raising activities. Among the judges asked to participate are jurists who are candidates for re-election. As part of the electoral process, some of the judges seeking re-election are regularly attending community events such as the organization's annual fund-raising dinner.

ISSUE

May a state court judge agree to host a luncheon as an item that would be sold in a silent auction at the annual fund-raising dinner of a nonprofit research organization?

ANSWER

No.

FACTS

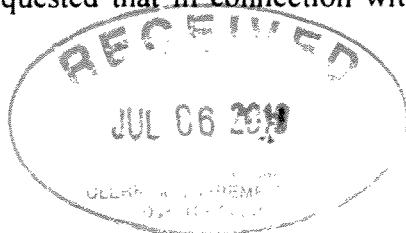
As part of its fund-raising activities, a nonprofit research organization conducts an annual dinner event. Like many such organizations' dinner events, a silent auction will be conducted at which attendees can "bid" an amount of money to acquire "items" offered for purchase in the auction. Typically, organizations will request the donation of the various "items" that are offered in the silent auction and the proceeds of the auction are thus treated as contributions to the organization.

The organization involved here has requested that in connection with the silent

DISCUSSION

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

Canon 3 declares that "[a] judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office." Nevada Code of Judicial Conduct, Canon 3. On the topic of a jurist's



participation in civic extrajudicial activities, and specifically those activities in furtherance of the fund-raising activities of civic organizations, Rule 3.7 to Canon 3 of the NCJC provides specific direction. Rule 3.7 explains that “a judge may participate in activities . . . sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations **not conducted for profit** . . .” Nevada Code of Judicial Conduct, Canon 3, Rule 3.7(A)(emphasis added).

Paragraph 1 of this rule, however, states that the judge’s activities may include “**assisting** in fund-raising, **but only if** the organization or entity is concerned with the law, the legal system, or the administration of justice, and the judge does not personally solicit funds other than as permitted by Rule 3.7(A)(2) . . .” Nevada Code of Judicial Conduct, Canon 3, Rule 3.7(A)(1)(emphasis added). The NCJC does not supply a meaning for the term “assisting” as used in Rule 3.7(A)(1). In the absence of a definition provided by the rule, the term should be construed through the application of the rules of construction used by the Supreme Court of Nevada. *See, e.g., Meridian Gold Company v. State ex rel. Dep’t of Taxation*, 107 Nev. 630, 633, 81 P.3d 516 (2003)(rules of statutory construction apply to administrative regulations).

The Court has frequently ruled that undefined words of a statute, regulation or rule should be given their ordinary meaning and that dictionaries are an appropriate source for determining a term’s “ordinary meaning.” *See, e.g., Dumaine v. State*, 103 Nev. 121, 125, 734 P.2d 1230 (1987). The dictionary definition of *assisting* means to “help or support”; “to give aid and support.”

See American Heritage College Dictionary 86 (4th ed. 2002).

The Commentary to Rule 3.7 is instructive and explains:

Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation.... But before participating in other activities, a judge should analyze the overall event and evaluate whether the judge’s activities may be viewed as coercive or an abuse of the prestige of judicial office.

For law-related organizations only, a judge may be listed as a host or member of an honorary dinner committee for an organization or entity’s fund-raising or member solicitation event, and also may be a speaker or guest of honor at such an event. **Otherwise**, a judge **may not** be a speaker or guest of honor at an event that is primarily for fund-raising or serve on an honorary dinner committee for an organization’s fund-raising event, **unless** the judge is a member of the organization or has had a close association with the organization or the event being celebrated, or is a close friend of the person being honored. The judge, however, should not use his or her title when serving on any such committee, unless comparable designations are listed for other persons.

See Nevada Code of Judicial Conduct, Canon 3, Rule 3.7(A), *Comments [3] & [3A]* (emphasis added).

Rule 3.7(A) also states that a jurist's participation in the activities of nonprofit organizations must be consistent with the mandates of Rule 3.1. That rule provides in relevant part, "when engaging in extrajudicial activities, a judge shall not . . . participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality . . ." Nevada Code of Judicial Conduct, Canon 3, Rule 3.1(C). The Commentary to Rule 3.1 further elaborates that "[t]o the extent . . . judicial independence and impartiality are not compromised, judges are encouraged to engage in . . . educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law" because such participation "helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system." Nevada Code of Judicial Conduct, Canon 3, Rule 3.1(C), *Commentary [1] & [2]* to Rule 3.1

Considering the applicable provisions of Rule 3.1 and 3.7, and in light of the commentary to these rules, a Nevada judge should decline the request of a nonprofit organization that the jurist provide (i.e., pay the associated expenses), host and attend a luncheon with the winning "bidder" as an "item" sold in connection with a silent auction at a fund-raising event. The Committee concludes that this type of support of a nonprofit organization fund-raising activities exceeds the very limited participation envisioned as appropriate under Rule 3.7 as consistent with Rule 3.1.

There is no doubt that the jurist is "assisting" in the fund-raising activities of a nonprofit organization not concerned with the law, the legal system, or the

administration of justice by providing and participating in the luncheon "item" that is auctioned. The proceeds of the winning bid for that "item" become a contribution to the organization, and the judge donating that "item" is indirectly requesting the contribution in exchange for the promised luncheon that the judge will host and attend. This is the type of fund-raising activity disfavored by Rule 3.7(A)(1). The fact that some of the judges involved may have a close association with the organization is not determinative because that association is only relevant to the limited circumstances identified in the commentary, namely as a speaker, guest of honor or service on an honorary dinner committee. Here the conduct is more closely akin to soliciting contributions.

The Committee concludes that the jurist is directly and actively "assisting" in the organization's fund-raising activities by allowing the organization to auction – a form of "selling" – access to the judge albeit for a philanthropic and worthy purpose. This situation is fraught with ethical peril for the jurist because the judge cannot control whether a litigant or his counsel will purchase this item and thereby create actual or perceived questions as to judicial independence and impartiality. Likewise, the judge cannot control the amount bid for the luncheon event with the judge, which in itself risks the public's trust by suggesting that access to a judge, even if only social and for good purpose, is something that can be auctioned for any reason. The participating judge also relinquishes to the bidding process of the civic organization control over the jurist's independence in deciding the appropriateness of extrajudicial business or social associations that may taint the judicial office.

We are mindful that the commentary to Rule 3.1 counsels on the importance of judges' community involvement and the public policy of fostering public appreciation of the judiciary. The Committee also respects the philanthropic motives and associations of Nevada judges. These important objectives can be achieved by the attendance of judges at the annual dinner functions of nonprofit organizations and the donation by the judge of an "item" for the silent auction that is neutral to the jurist's office, such as a gift basket. A judge's attendance at the event and donation of such an "item" do not implicate any of the Canon or Rules discussed in this opinion and avoid conflicts with the NCJC we otherwise identify in this opinion.

Additionally, in the opinion of the Committee, Canon 3 definitively resolves the question. The mandates of Canon 3, Rule 3.1 and Rule 3.7 are not subject to a different standard of application based on whether an incumbent judge is also a candidate for election to judicial office. See Nev. Code Jud. Conduct, Canon 4, Rule 4.2(A)(1)("[a] judicial candidate in a public election shall . . . act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary").

CONCLUSION

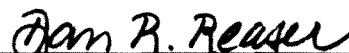
A state court judge may not agree to host a luncheon as an item that would be sold in a silent auction at the annual fund-raising dinner of a nonprofit research organization.

REFERENCES

Rule 5 Governing Standing Committee On Judicial Ethics & Election Practices; Nevada

Code of Judicial Conduct, Canon 3, Rule 3.1(C) & 3.7(A), *Commentary [1] & [2]* to Rule 3.1, *Commentary [3] & [3A]* to Rule 3.7, Rule 4.2(A)(1); Meridian Gold Company v. State ex rel. Dep't of Taxation, 107 Nev. 630, 633, 81 P.3d 516 (2003); Dumaine v. State, 103 Nev. 121, 125, 734 P.2d 1230 (1987); American Heritage College Dictionary 86 (4th ed. 2002).

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.



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