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STATE OF NEVADA

STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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ADVISORY OPINION: JE11-003

PROPRIETY OF A JUDGE PROVIDING
A LETTER TO LEGISLATORS
SUPPORTING CONTINUED STATE
FUNDING OF A PARENTING SKILLS
EDUCATIONAL PROGRAM

ISSUE

May a judge submit a letter to the Nevada Legislature requesting continued State funding of a Family to Family Connection program operated through the Department of Health and Human Services?

ANSWER

Yes. The Code permits judges to provide testimony to the legislative branch so long as the subject matter concerns the law, legal system, provision of legal services, or administration of justice.

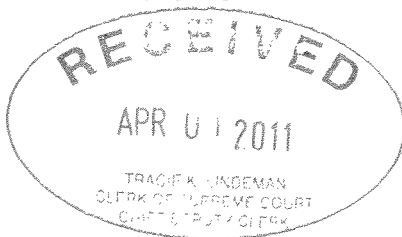
FACTS

A judge asks whether it would be a violation of the Code if the judge submitted a letter to the legislative branch supporting continued public funding of a Family to Family educational program. The judge states that the program provides educational classes for parenting skills, child safety and health and nutrition education and care and helps the administration of justice and making decisions in the best interest of children. The judge states the Court frequently refers parents to the Family to Family program and uses that program to

help administer custody and visitation caseload. The judge indicated that without a resource such as this to educate parents on how to provide a safe, healthy environment for their children, learn about nutrition and appropriate means of disciplining children, many parents would likely lose custody or visitation privileges. The judge believes this program and his ability to refer parents to this program with Court follow-up on completion of programs has helped facilitate custody and visitation solutions and avoided abuse and neglect proceedings under Chapter 432B. Without this resource, the judge stated options in custody cases would be "far more limited", and many parents would lose custody/visitation rights which in his experience leads to other legal issues.

DISCUSSION

Canon 3 states that "A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office." Specific to this issue, Rule 3.2 provides that a "judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except: (A) in connection with matters concerning the law, the legal system, or the administration of justice; [or] (B) in connection with matters about which the judge acquired knowledge or expertise in the courts of the judge's judicial duties. . ." Comment 1 to Rule 3.2 recognizes that judges possess special



expertise “in matters of law, the legal system, and the administration of justice and may properly share that expertise with governmental bodies and executive or legislative branch officials.” Directly relevant here, Comment 1 permits a judge to “actively support public agencies or interests or testify on public matters concerning the law, the legal system, the provision of legal services, and the administration of justice.” See also Rule 3.1 (“judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not . . . (E) make use of court premises, staff, stationery, equipment or other resources, except for incidental use for activities that concern the law, the legal system or the administration of justice. . . .”)

The Commentary specifically allows a judge to support public agencies or interests or testify on public matters before the legislative branch so long as such matters concern the law, the legal system, the provision of legal services, or the administration of justice. The judge in this matter has stated that the Family to Family Program, in the experience of the judge, provides a direct benefit to the legal system and the administration of justice. The judge has represented that the publicly funded program helps facilitate custody and visitation solutions and avoids abuse and neglect proceedings under Chapter 432B, and without the resource judicial options would be limited which could lead to additional impacts on the legal system through further legal proceedings. Based on this description, the Committee concluded that the subject matter of the proposed letter could involve or concern a matter related to the law, legal system or administration of justice, and therefore would be a permitted activity under Rule

3.2. Cf. Advisory Opinion JE10-008 (subject matter of ballot question did not concern law, and therefore judge’s extra judicial participation was not proper). The Committee notes that the judge should be cognizant of the limitations of Rule 3.2, and recommends that any testimony provided include descriptions of the manner in which the subject at issue concerns the law, legal system, provision of legal services or administration of justice.

CONCLUSION

It is the opinion of the Committee that a judge may provide a letter to the legislative branch encouraging continued public funding of a program that concerns the law, legal system, provision of legal services, or the administration of justice.

REFERENCES

Revised Nevada Code of Judicial Conduct, Canon 3; Rule 3.1; Rule 3.2; Commentary to Rule 3.2, Advisory Opinion JE10-008.

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