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TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
CHIEF DEPUTY CLERK

STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

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OPINION NO.: JE11-009

PROPRIETY OF A DISTRICT COURT JUDGE SERVING AS A COURT APPOINTED SPECIAL ADVOCATE OR AS A MEMBER OF THE BOARD OF DIRECTORS OF THE CASA FOUNDATION.

ISSUE

May a Nevada District Court Judge accept appointment as a volunteer Court Appointed Special Advocate or to serve on the Board of Directors of the CASA Foundation?

ANSWER

No.

FACTS

A district court judge has inquired whether a Nevada judicial officer may participate as a volunteer Court Appointed Special Advocate ("CASA") or serve on the Board of Directors of the CASA Foundation. CASA appointees represent the interests of, and act as advocates for, abused and neglected children in proceedings before Nevada courts. The CASA Foundation is a non-profit organization that promotes, administers and engages in fund-raising activities to support the CASA program. For the purpose of this opinion we assume that the judicial officer subject to the opinion request is not a retired judge subject to recall, continuing part-time judge or pro tempore part-time judge.

DISCUSSION

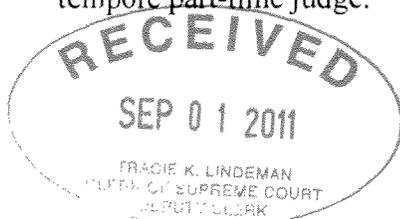
The Committee's opinion evaluates the question presented only as it relates to compliance with the requirements of the Nevada Code of Judicial Conduct. *Rule 5 Governing Standing Comm. On Judicial Ethics*. Accordingly, this opinion is limited by the authority granted by Rule 5.

Canon 3 states, "[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. NCJC Rule 3.7 states:

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

....

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity;



(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Nevada Code of Judicial Conduct, Canon 3, Rule 3.7(A)(6).

The CASA Foundation is a charitable organization not conducted for profit. Rule 3.7(A)(6) thus would permit a district judge to serve as a member of the Board of Directors unless the CASA Foundation Board would ordinarily engage in proceedings before the judge or frequently be involved in litigation before the court of which the judge is a member. *Id.* 3.7(A)(6)(a)-(b). The Committee would not expect the CASA Foundation Board itself to be a frequent district court litigant nor would that Board's actions routinely be the subject matter of district court proceedings.

Rule 3.7, however, requires that we must also evaluate the requirements of NCJC Rule 3.1. That rule provides:

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not;

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable

person to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would appear to a reasonable person to be coercive, or

(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, or unless such additional use is permitted by law.

Nevada Code of Judicial Conduct, Canon 3, Rule 3.1.

The provisions of the previous Canon 4A and 4C have been substantially retained in NCJC Rule 3.1 and Rule 3.7. *See American Bar Ass'n, Model Code of Judicial Conduct* 111-114 & 121-126 (2007 ed.). The Committee previously opined under former NCJC Canon 4A and 4C that a district judge should "decline appointment to serve on the board of directors of a non-profit organization that provides support services to victims of domestic violence, including a court advocacy program" in our courts. We reasoned that the advocates selected and supported by the non-profit organization would be "engaged in proceedings ordinarily coming before the judge or [that] will engage frequently in adversary proceedings in the judicial district in which the judge sits or in the justice court subject to the appellate jurisdiction of the court of which the judge is a member." We also observed that the judge should not serve "on the organization's board of directors if doing so cast reasonable doubt on the judge's capacity to act impartially as a judge or would interfere with the proper performance of judicial duties." *See Nev. Advisory Opinion, No. JE09-002* (March 13,

2009). *See generally* J. Alfini, S. Lubet, J. Shaman & C. Geyh. Judicial Conduct and Ethics § 9.05 at 9-23 to 9-26 (4th ed. 2007 & Supp. 2010)

NCJC Rule 3.1 likewise admonishes judges to avoid extrajudicial activities otherwise prohibited by the NCJC or the law. Nevada Code of Judicial Conduct, Canon 3, Rule 3.1. A judge that participates as a CASA volunteer will be acting as a legal representative and advocate for children in proceedings before Nevada courts. This role is akin to acting in a fiduciary position such as a guardian or personal representative of a person not a family member of the jurist. Serving in such a capacity is impermissible under the NCJC. *See* Nevada Code of Judicial Conduct, Canon 3, Rule 3.8(A). Moreover, a district court judge's service as a court-appointed advocate for a child in judicial proceedings appears inconsistent with the statutory prohibition on such a judge's practice of law. *See* NEV. REV. STAT. § 3.120.

The question of whether a judge may serve as a member of the board of directors or advisory board for CASA programs and similar legal aid organizations has been addressed by other state judicial ethics advisory panels in the same and similar contexts. The majority of these panels have concluded that judges should not accept appointment to these positions. *See, e.g.*, Connecticut Comm. on Jud. Ethics, Formal Op. No. 2009-10 (Apr. 8, 2009); Connecticut Comm. on Jud. Ethics, Informal Op. No. 2009-33 (Nov. 6, 2009); Nebraska Jud. Ethics Op. 05-1 (Jan. 5, 2005); Louisiana Sup. Ct. Comm. on Jud. Ethics Op. No. 213 (Mar. 3, 2009); *but see* Kansas Jud. Ethics Advisory Panel, Op. No. JE-52 (Oct. 21, 1994). We also note that at least one state supreme court has found judicial misconduct by a district court judge because

of his extrajudicial activities with a CASA program. *See In the Matter of Castellano*, 889 P.2d 175 (N.M. 1995).

Based on the facts presented, the applicable provisions of the NCJC, our previous opinions and the weight of authority from other jurisdictions, the Committee concludes a judge should decline to serve on the Board of Directors for the CASA Foundation and may not participate as a court-appointed CASA volunteer. Doing so is inconsistent with the mandates of the NCJC and casts reasonable doubt on the judge's capacity to act impartially as a judge or would interfere with the proper performance of judicial duties.

CONCLUSION

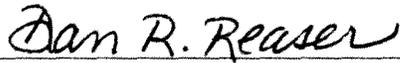
A Nevada District Court Judge may not accept appointment as a volunteer Court Appointed Special Advocate. The judge also should decline to serve on the Board of Directors of the CASA Foundation

REFERENCES

Rule 5 Governing Standing Comm. On Judicial Ethics; Nevada Code of Judicial Conduct, Canon 3; Nevada Code of Judicial Conduct, Canon 3, Rule 3.1; Nevada Code of Judicial Conduct, Canon 3, Rule 3.7(A)(6); Nevada Code of Judicial Conduct, Canon 3, Rule 3.8(A); NEV. REV. STAT. § 3.120, In the Matter of Castellano, 889 P.2d 175 (N.M. 1995); Nev. Advisory Opinion, No. JE09-002 (March 13, 2009); Connecticut Comm. on Jud. Ethics, Formal Op. No. 2009-10 (Apr. 8, 2009); Connecticut Comm. on Jud. Ethics, Informal Op. No. 2009-33 (Nov. 6, 2009); Nebraska Jud. Ethics Op. 05-1 (Jan. 5, 2005); Louisiana Sup. Ct. Comm. on Jud. Ethics Op. No. 213 (Mar. 3, 2009); Kansas Jud. Ethics Advisory Panel, Op. No. JE-52 (Oct. 21, 1994).

21, 1994); American Bar Ass'n, Model Code of Judicial Conduct 111-114 & 121-126 (2007 ed.); J. Alfini, S. Lubet, J. Shaman & C. Geyh, Judicial Conduct and Ethics § 9.05 at 9-23 to 9-26 (4th ed. 2007 & Supp. 2010) .

This opinion is issued by the Standing Committee on Judicial Ethics. 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.



Dan R. Reaser, Chairman