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STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

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ADVISORY OPINION: JE12-009

PROPRIETY OF A JUDGE SOLICITING OR ACCEPTING DONATIONS TO BE USED AS INCENTIVES FOR PARTICIPANTS IN COURT ADMINISTERED DRUG COURT PROGRAM

FACTS

In many of the state's court administered drug court programs court masters and judges use gift cards and other merchandise as incentives, rewarding participants for meeting certain milestones in the program. A court master seeks the Committee's opinion on whether a judge, or the members of a judge's staff, may (1) solicit donations of cash, gift cards, or other merchandise to be used as incentives; (2) accept donations of cash, gift cards, or other merchandise to be used as incentives; or (3) request that such gift cards or other merchandise be discounted or offered for purchase at a reduced rate.

ISSUE

1. May a judge, or a member of a judge's staff, solicit and/or accept donations of cash, gift cards, or other merchandise to be used as incentives for participants in a court administered drug court program?

2. May a judge or a member of a judge's staff, request that gift cards or other merchandise that will be used as incentives in a court administered drug court program be discounted or offered for purchase at a bulk reduced rate by a vendor?

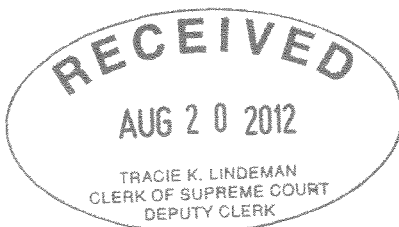
DISCUSSION

The Committee is authorized to render advisory opinions evaluating the scope and applicability of the NCJC. *Rule 5 of the Rules Governing the Standing Committee on Judicial Ethics.*

The issues presented by this request are similar to those addressed by the Committee in Advisory Opinion JE11-014. In that opinion the Committee considered whether a judge or members of the judge's staff could solicit financial donations from vendors or sponsors in support of the Nevada Judicial Leadership Summit. The Committee opined that the NCJC precluded judges and chamber staff from such solicitation, but that no such restriction applied to staff of a court's administrative office. The principles applied by the Committee in that opinion apply equally to

ANSWER

No as to solicitation of donations or requests that gift cards or other merchandise be offered at a reduced rate. The Nevada Code of Judicial Conduct ("NCJC") precludes a judge or chamber staff from soliciting financial donations or other financial benefits, such as discounts or price reductions. Nothing in the NCJC, however, would preclude a judge from accepting unsolicited donations or preclude staff of a court's administrative office from seeking such donations or discounts.



the request at issue here. Accordingly, and as discussed more fully below, the Committee finds that, although neither a judge nor a member of the judge's chamber staff may solicit donations or request special discounts, no provision of the NCJC precludes a judge from accepting unsolicited donations or precludes staff of a court's administrative office from seeking such donations or discounts.

1. *Solicitation of Donations or Special Discounts*

Judges must, at all times, act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary. Rules 1.2, 3.1(C). This includes a duty to avoid both impropriety and the appearance of impropriety. Rule 1.2. Problems often arise when judges engage in extrajudicial activities, especially when those activities involve solicitation of donations. *See* Rule 3.1(D); *see also* Comment [4] to Rule 3.1. In that respect, Rule 3.7(A)(2) only permits a judge to solicit contributions from family members and from other judges over whom the judge does not exercise supervisory or appellate authority. One of the purposes of this limitation is to avoid the appearance of coercion. *See* Comment [3] to Rule 3.7.

As noted in JE11-014, the Committee believes the risk of perceived coercion or of undermining the integrity of the judiciary precludes active judges and their chamber staff from soliciting donations from vendors or sponsors. But those risks are not present when staff of the administrative office of the court, who do not serve a judicial function and are not identified with a specific judge, engage in such solicitation. Consequently, nothing in the NCJC precludes such staff from soliciting donations so long as it is clear that

the solicitation is not made on behalf of a judge or group of judges.

2. *Acceptance of Donations*

The restrictions noted above relate only to the solicitation of contributions or donations, not to the acceptance of such contributions or donations. No provision of the NCJC precludes a judge or a judge's staff from accepting, on behalf of the court administered program, donations of items such as gift cards or merchandise to be used as incentives in the program.

With respect to a judge's acceptance of gifts or benefits, a judge is ordinarily prohibited from accepting "gifts, loans, bequests, benefits, or other things of value, if acceptance . . . would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." Rule 3.13. The Commentary to that rule cautions that "whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge..." *See* Comment [1] to Rule 3.13. The restrictions imposed by Rule 3.13 are imposed according to the magnitude of that risk, allowing acceptance of nominally valued gifts where the risk of undermining the integrity of the office is low.

The Committee finds the risk that acceptance of such donations on behalf of a court program, and to be used as incentives in the program, would be viewed as an attempt to influence a judge is minimal. First, the Committee does not believe the value of the gift cards or merchandise typically used as incentives in these programs are of sufficient value to create the appearance of impropriety. But more importantly, the benefit of those donations

does not flow to the judge, but to those successful participants in the court administered drug program.

CONCLUSION

Although neither a judge nor a member of the judge's chamber staff may solicit donations or request special discounts, no provision of the NCJC precludes a judge from accepting unsolicited donations or precludes staff of a court's administrative office from seeking such donations or discounts.

REFERENCES

Rule 5 Governing the Standing Committee on Judicial Ethics; Nev. Code Jud. Conduct Canon 1, Rule 1.2; Nev. Code Jud. Conduct Canon 3, Rules 3.1, 3.7 & 3.13; Comment [4] to Rule 3.1; Comment [3] to Rule 3.7; Comment [1] to Rule 3.13; and JE11-014.

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.



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