PROPRIETY OF A JUDGE PARTICIPATING IN AN "ATTORNEYS OSCARS" AWARDS PROGRAM AND VOTING ON BEST ATTORNEY PERFORMANCES

ISSUE

May a judge participate in an awards program in which judges would nominate or vote for "best attorney" awards in a variety of categories?

ANSWER

No. The Committee believes judicial participation in a program in which judges will vote for "best attorney" performances would appear to a reasonable person to undermine the independence and impartiality of the judiciary.

FACTS

A judge has presented the Committee with a hypothetical question inquiring whether it is a violation of the Nevada Code of Judicial Conduct ("NCJC") for a judge to participate in an attorney awards program called the Las Vegas Oscars, in which judges would nominate or participate in voting for the "best" attorney in a variety of categories such as best lead counsel, best criminal trial, or best closing argument. A public awards ceremony would be held to issue the awards, the cost of which would be paid by donors.

DISCUSSION

The Committee is authorized to render advisory opinions evaluating the scope of the NCJC. Rule 5 Governing the Standing Committee On Judicial Ethics. Accordingly, this opinion is limited by the authority granted in Rule 5.

An independent, fair and impartial judiciary is indispensable to our system of justice. Preamble [1], Nev. Code Jud. Conduct. Canon 2 of the NCJC states "[a] judge shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." Rule 1.2 imposes upon judges the obligation to act at all times in such a manner. See Nev. Code Jud. Conduct Rule 1.2. As recognized by the Comments to Rule 1.2, "public confidence in the judiciary is eroded by ...conduct that creates the appearance of impropriety" and "conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary." Nev. Code Jud. Conduct Rule 1.2, Comments [1] and [3].

The Committee is concerned that nominating or voting on "best" attorneys in various categories would undermine the integrity or independence of the judiciary in violation of Rule 1.2. The Committee is concerned that such a nomination or vote would appear to a reasonable person to indicate favoritism by the judge, and would undermine the appearance that persons represented by counsel who were not the "best" would not be treated equally. The Committee believes that this type of
program also creates the perception that counsel are not on equal footing in the eyes of the judiciary and, thus, could cause a litigant to lose confidence in counsel that may appear against an attorney who has been nominated for or received recognition by a judge.

The Committee expressed concern that participating in the nomination and voting on “best” attorneys could interfere with the proper performance of the judge’s judicial duties by leading to frequent disqualification of the judge. The Committee believes it likely that counsel will frequently seek to disqualify a judge in cases where the judge nominated or voted opposing counsel as the “best” attorney in some category.

The Committee also expressed concern with how counsel may use such awards in marketing materials. A judge should avoid abusing the prestige of judicial office to advance the personal or economic interests of others and should avoid allowing others to do so. Nev. Code Jud. Conduct Rule 1.3. The Committee is concerned that counsel that receive “best attorney” awards may abuse the prestige of judicial office in marketing materials by suggesting the award is some type of official judicial recognition that they are the “best attorney” in some category. The Committee expressed strong concern that participation in this type of award program creates a significant risk of violating Rule 1.3 and undermining public confidence in the prestige and impartiality of the judiciary.

CONCLUSION

The Committee concludes that the Code of Judicial Conduct does not allow a judge to participate in an “Oscars” type award program where the judge will nominate or vote on the “Best Attorney” in various categories. The Committee believes such a program would appear to a reasonable person to undermine the independence and impartiality of the judiciary, would lead to frequent disqualification or challenge, and creates a significant risk that attorney marketing of such awards will abuse of the prestige of judicial office.

REFERENCES

Nev. Code Jud. Conduct, Canon 1 and Canon 2; Rule 1.2; Rule 1.3; Rule 3.1.

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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