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ETHICS AND ELECTION PRACTICES

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PROPRIETY OF A FAMILY COURT
DOMESTIC VIOLENCE COMMISSIONER
PARTICIPATING ON A DOMESTIC
VIOLENCE FATALITY REVIEW
COMMITTEEIssue

1. May a family court domestic violence commissioner participate on a domestic violence fatality review team so long as the commissioner does not participate in the review of cases that are pending in, or which reasonably may come before, the court in which the commissioner presides?

Answer: The Committee answers yes to the foregoing question.

Facts

The duties of a family court domestic violence commissioner include hearing cases as assigned by the court and making findings of fact, conclusions of law and recommending temporary and extended orders regarding domestic violence matters to the presiding judge. The commissioner also reviews ex parte applications for temporary or extended protection orders, and conducts hearings on matters relating to extended, modified or dissolved protection orders. The commissioner also participates in process improvement initiatives and case management practices.

A domestic violence commissioner has been invited, or is eligible, to participate in a Domestic Fatality Review program, or project, funded by the State Justice Institute. This

program, or project, involves a gathering of judges, attorneys and other professionals involved in the judicial process dealing with domestic violence fatality cases. The individuals attending the program participate in teams that review and analyze hypothetical, or actual, cases involving domestic violence fatalities in the hopes of identifying ways to prevent such deaths in the future. The purpose of the program is to improve the professional competence of the participants and to formulate recommendations to improve the legal system.

Discussion

The Nevada Code of Judicial Conduct sets forth the applicable standards from which our judges are provided guidance for ethical conduct.

Canon 3B(2) states that a judge shall be faithful to the law and maintain professional competence in it. Canon 3B(3)-(11), sets forth additional canons of conduct to ensure that judges faithfully and impartially perform their adjudicative responsibilities.

Canon 4C(2) of the Nevada Code of Judicial Conduct states as follows:

"(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the

administration of justice. ..."

Canon 4C(3)(a) further states that a judge may serve as an officer, director, trustee, or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, unless it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge, or will be engaged frequently in adversary proceedings in the court of which the judge is a member.

As an officer of the family court, a domestic violence commissioner is subject to these Canons.

Participation by the domestic violence commissioner in the Domestic Fatality Review program appears to be consistent with Canon 4C(2) and (3) which permit judges to participate in governmental and non-governmental organizations devoted to the improvement of the law, the legal system or the administration of justice. Participation on a Domestic Fatality Review team would appear to provide the domestic violence commissioner with access to the professional knowledge of other judges, lawyers and legal experts in adjudicating such cases, and will assist the commissioner in improving and maintaining his, or her, professional competence. Such participation would also appear to promote the improvement of the legal system and the administration of justice.

In participating in any such program, the judicial officer should bear in mind the other Canons of Judicial Conduct, including the prohibition against making public or non-public comments about a court proceeding that might reasonably be viewed as affecting

its outcome or impairing its fairness. The commissioner also should not review domestic violence fatality cases that are currently pending before the court in which the commissioner serves or that are reasonably likely to come before the court in which the commissioner serves. However, the Committee does not believe that the commissioner is prohibited from reviewing, as part of such a program, closed domestic violence fatality cases which were adjudicated in the court in which the commissioner serves so long as there is no reasonable likelihood of the case again coming before that court. In the event this does occur, the commissioner should recuse himself, or herself, from hearing the matter.

Conclusion


The Committee concludes that the family court domestic violence commissioner may participate in a Domestic Fatality Review program intended to provide education to participants in performing their professional duties in adjudicating such cases and in formulating recommendations for the improvement in the legal system and administration of justice. The commissioner should exercise reasonable and necessary prudence to avoid participating in reviews of cases that are presently before the court or are likely to come before the court in which the commissioner serves.

References

Nevada Code of Judicial Conduct; Canons 3 and 4.

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