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STATE OF NEVADA

STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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PROPRIETY OF A JUDGE PROVIDING RECORDS GENERATED (1) IN PRIOR NON-JUDICIAL PROFESSION AND (2) PRIOR TO TAKING THE BENCH, WHICH WERE SOUGHT BY A LITIGANT THROUGH A DULY ISSUED SUBPOENA DUCES TECUM.

Subsection 2B provides, in relevant part:

A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. *A judge shall not testify voluntarily as a character witness.* (Emphasis added)

Issue

May a judge provide records generated in a professional capacity as a marriage and family therapist prior to taking the bench when served with a subpoena duces tecum?

Conclusion

In discussion, members of the committee felt that the ethical dilemma turns on whether the judge's participation as a character witness is voluntary. There is no ethical rule against responding to process, whether it is a subpoena duces tecum for records or a subpoena to testify at a proceeding regarding matters as to which the judge has knowledge because of activities before becoming a judge.

Answer: Yes.

Facts

A district judge was served with a subpoena duces tecum for the production of records generated in a professional capacity as a marriage and family therapist during the period before taking the bench. The judge is concerned that production of the records may lead to being subpoenaed to testify as a character witness in a domestic relations case, and asked the committee to determine the judge's obligation to respond to the subpoena duces tecum and whether the judge could refuse to testify as a character witness.

A judge should not volunteer to testify as a character witness, and should discourage it when requested. *See Commentary, Canon 2, Subsection B.* However, there is no immunity from compulsory process, and a judge answering a subpoena would not violate Canon 2, Subsection B.

Discussion

Canon 2 provides, "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities."

References

Canon 2, Canon 2B and Commentary to Canon 2B.

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