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STATE OF NEVADA

**STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES**

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ADVISORY OPINION: JE11-007

PROPRIETY OF A JUDGE SITTING ON A MULTIDISCIPLINARY TEAM ORGANIZED TO REVIEW THE DEATH OF A VICTIM OF CRIME THAT CONSTITUTES DOMESTIC VIOLENCE PURSUANT TO NRS 33.018

Judge also inquires whether it makes a difference under the Code whether the judge is appointed by the Attorney General under Subsection 2, Senate Bill 66 (2011) or volunteers for service on the multidisciplinary team under Subsection 3 of Senate Bill 66.

ISSUE

May a judge serve as an appointed member on a multidisciplinary team organized pursuant to Senate Bill 66 (2011) and NRS 33.018 to review the death of the victim of a crime constituting domestic violence?

DISCUSSION

Senate Bill 66 (2011) authorizes the Attorney General to organize a multidisciplinary team to review the death of the victim of a crime that constitutes domestic violence pursuant to NRS 33.018 if a court does not organize such a multidisciplinary team under NRS 217.475. In addition to reviewing a particular case, the multidisciplinary team organized under Senate Bill 66 is required to:

ANSWER

No. A Nevada judge may not seek or accept appointment to a multidisciplinary team to review the death of the victim of a crime that constitutes domestic violence created pursuant to Senate Bill 66 (2011), as serving on such a team would likely create an appearance of bias in favor of victims which would appear to a reasonable person to undermine the judge's impartiality.

a) examine the trends and patterns of deaths of victims of crimes that constitute domestic violence;

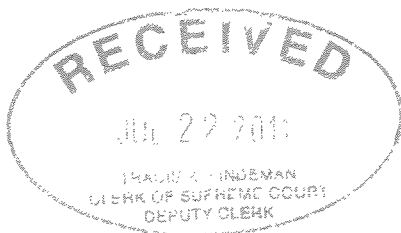
b) determine the number and type of incidents the team wishes to review;

FACTS

A judge has inquired whether serving as an appointed member on a multidisciplinary team organized pursuant to NRS 33.018 to review the death of the victim of a crime constituting domestic violence creates any issues under the Nevada Code of Judicial Conduct. The

c) make policy and other recommendations for the prevention of deaths from crimes that constitute domestic violence;

d) engage in activities to educate the public, providers of services to victims of domestic violence and policymakers concerning deaths from crimes that



constitute domestic violence and strategies for intervention and prevention of such crimes; and

e) recommend policies, practices and services to encourage collaboration and reduce the number of deaths from crimes that constitute domestic violence.

Legislative history of S.B. 66 indicates the purpose of the multidisciplinary team is to further the “underlying objectives of prevention, preserving safety of battered women, holding perpetrators accountable, and assessing whether victims utilized local or statewide services”, as well as to “enhance a community’s coordinated response” to incidents of domestic violence. *Hearing on S.B. 66 Before the Senate Comm. On Judiciary, 76th Sess., Nev. Legis., (Mar. 14, 2011).*

Canon 3 of the Nevada Code of Judicial Conduct (the “NCJC”) provides that a “judge shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.” Rule 3.4 prohibits a judge from accepting an appointment to a governmental committee, board, or commission unless it is one that concerns the law, legal system or administration of justice. Additionally, Rule 3.1 states that a judge shall not “participate in activities that will lead to the frequent disqualification of the judge” or which “would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.” *Rule 3.1(B) & 3.1 (C).* Comment 1 to Rule 3.4 further cautions that even when the underlying purpose is one related to the law, legal system or administration of justice, the judge should “assess the appropriateness of accepting the appointment” and give “due regard to the requirements of the

independence and impartiality of the judiciary.” *Rule 3.4, Comment [1].*

The critical inquiries posed by this hypothetical, therefore, are: i) whether the purpose and function of such a team is related to the law, legal system, and administration of justice consistent with Rule 3.4; and ii) whether participation on a multidisciplinary domestic violence fatality review team appears to undermine the judge’s independence and impartiality and will likely lead to disqualification contrary to Rule 3.1.

Like many other jurisdictions, the Committee has recognized that for service on a governmental commission to be related to the law, legal system or administration of justice consistent with Rule 3.4, there must be a direct link between the purpose and function of the commission and how courts go about the business of meeting their statutory and constitutional duties. *See Advisory Opinion JE11-003* (participation in a Family to Family program is permissible where the program facilitates custody and visitation options available to the judge in adjudicating family disputes); *Advisory Opinion JE 10-008* (participation on ballot question drafting committee is impermissible because the ballot question is not directly related to the law). While many issues may be tangentially related to the law, legal system, and administration of justice, if the nexus is indirect or incidental, the limitations of Canon 3 are implicated.

Applying this standard, the Committee concludes there does not appear to be a sufficient nexus between the purpose and function of the multidisciplinary team and the law, legal system or administration of justice to overcome the limitations in Rule 3.4. An examination of the multidisciplinary team’s enabling legislation

and legislative history reveals that a critical purpose and function of the team is to make policy and other recommendations to prevent domestic violence crimes and to promote victim advocacy issues and activities that appear more legislative in character than judicial. While crime prevention is an important component of broad criminal justice policy, the quasi-legislative functions of the multidisciplinary team in furthering that goal appear to lack the direct nexus to judicial administration of law contemplated by Rule 3.4.

The Committee also finds it instructive that advisory bodies in other jurisdictions have reached the same conclusions when evaluating governmental commissions with functions similar to those of the multidisciplinary team. See *Colorado Judicial Ethics Advisory Board Opinion 2005-04* (the Colorado commission's goal of reducing crime lacked a direct nexus to the law, legal system or judicial administration of law).

Even if the purpose of the multidisciplinary team could be construed as having a direct nexus to the law, legal system or administration of justice as intended by Rule 3.4, the Committee concludes that a judge's participation on the multidisciplinary team creates an appearance that could reasonably call into question a judge's impartiality and would likely lead to frequent disqualification.

A number of other jurisdictions have examined these same issues in the context of crime prevention or fatality review committees, which the Committee finds instructive. Relying on judicial canons similar to Rule 3.1 and 3.4, the Colorado Judicial Ethics Advisory Board concluded it was inappropriate for a judge to accept a nomination to join a municipal commission

devoted to crime control and prevention because participation would "call into question the judge's impartiality, effectiveness, and independence." *Colorado Judicial Ethics Advisory Board Opinion 2005-04*. The Colorado Board recognized that the commission was engaged primarily in a quasi-legislative policymaking function, and expressed concern that involvement in recommending policies could likely be construed as an endorsement of the substantive recommendations of the commission and an alignment with the interests of law enforcement. *Id.*

Other jurisdictions have reached similar conclusions, finding participation on fatality review or crime prevention committees impermissible under canons similar to Rule 3.1. See *Alabama Judicial Inquiry Commission Advisory Opinion 97-635* (service on panel to evaluate child fatality cases and examine polices to determine efficiency in discharge of child protection services is impermissible); *Arizona Judicial Ethics Advisory Committee Opinion 97-03* (judge may not serve on a domestic violence commission created for the purpose of addressing and reducing domestic violence); *Arkansas Advisory Opinion 2003-02* (participation on a fatality review team or coordinated review of service delivery to child victims is impermissible); *Maryland Judicial Ethics Committee Opinion 2009-2* (judge may engage in limited consulting with a child abuse task force but may not participate on a fatality review, approve grants or critique policies of social and law enforcement agencies).

In 2000, the Committee examined whether it was permissible for a family court domestic violence commissioner to sit on a domestic violence fatality review team. Focusing on former Canon 4C (predecessor to Rule 3.4), the Committee concluded such

service was consistent with the improvement of the law, legal system or administration of justice. *Advisory Opinion JE00-005*. However, given the limitations imposed by Rule 3.1 and the recognition by a majority of other jurisdictions that it is impermissible for a judge to serve on a fatality review board, the Committee rejects the conclusions in *Advisory Opinion JE00-005* and specifically finds it impermissible for a judge to serve as a member of a fatality review team created pursuant Senate Bill 66 (2011).

The Committee concludes that a judge's appointment to and participation on a multidisciplinary team created pursuant to Senate Bill 66 gives the appearance of favoritism and raises a question as to the judge's ability to preside fairly over certain cases. One of the central themes of the Code of Judicial Conduct is that judges must perform their duties independently and impartially and cannot participate in any activity that might suggest the appearance of favoritism or call into question the impartiality of the judiciary. Domestic violence issues come before courts on a regular basis. Participation on a commission whose function is to proactively protect victims of domestic violence, coordinate closely with law enforcement to reduce future incidents of violence and recommend and pursue quasi-legislative policies in furtherance of those goals would indicate that a judge espouses a particular point of view with respect to domestic violence issues, contrary to Rule 3.1. While the purpose and function of the multidisciplinary team is certainly laudable, where those purposes are advocated by a judge they likely create an appearance of bias which would appear to a reasonable person to undermine the judge's impartiality on domestic violence issues. The Committee notes that the foregoing

conclusions would not prohibit a judge from providing factual information to a multidisciplinary team if requested and where otherwise permissible, or to appoint persons to a multidisciplinary team pursuant to NRS 217.475.

CONCLUSION

A Nevada judge may not seek or accept appointment to a multidisciplinary team to review the death of the victim of a crime that constitutes domestic violence created pursuant to Senate Bill 66 (2011), as serving on such team would likely create an appearance of bias in favor of victims which would appear to a reasonable person to undermine the judge's impartiality.

REFERENCES

Nev. Code Jud. Conduct, Canon 3, Rule 3.1(B), 3.1(C) & Rule 3.4; *Commentary [1]* to Rule 3.4; NEV. REV. STAT. §33.018; NEV. REV. STAT. §217.475; Senate Bill 66 (76th Sess., Nevada Legislature, 2011); *Hearing on S.B. 66 Before the Senate Comm. On Judiciary*, 76th Sess., Nev. Legis., (Mar. 14, 2011); *Advisory Opinion JE11-003*; *Advisory Opinion JE10-008*; *Advisory Opinion JE00-005*; *Colorado Judicial Ethics Advisory Board Opinion 2005-04*; *Alabama Judicial Inquiry Commission Advisory Opinion 97-635*; *Arizona Judicial Ethics Advisory Committee Opinion 97-03*; *Arkansas Advisory Opinion 2003-02*; *Maryland Judicial Ethics Committee Opinion 2009-2*.

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