STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

DATE ISSUED: October 24, 2013 **ADVISORY OPINION: JE13-006**

PROPRIETY OF A JUDGE LISTING HIS NAME ON AN INVITATION TO A FUNDRAISER BY A NONPROFIT ORGANIZATION TO SUPPORT A CENTER NAMED AFTER THE JUDGE

ISSUE

May a retired judge still actively serving as a senior judge agree to have his name listed on an invitation to a fund raising event hosted by a nonprofit to raise money for an at-risk youth center named in honor of the judge?

ANSWER

In the narrow circumstances presented, a judge may permit his or her name to appear on a fundraising invitation for a non-law related organization celebrating and raising money to support a juvenile services center named in honor of the judge. The judge is still prohibited by Rule 3.7(A)(1) from personally soliciting funds for or soliciting membership in the organization, and the use of the judge's title and the judge's activities at the fund raising event for the center may not appear to a reasonable person to be coercive or an abuse of the prestige of judicial office.

FACTS

A retired judge recalled to active service as a senior judge has inquired whether it would be a violation of the Nevada Code of Judicial Conduct ("NCJC") for a nonprofit organization to list the judge on the invitation list to a fund raising event to support a center (the "Center") formerly operated by the county juvenile services department which serves as a gateway for early intervention and prevention programs for at-risk youth. The Center includes reception, processing and case management of status offending youth prior to police involvement. Due to restraints in county funding, the judge indicated that the Center needs outside funding to support its operations. Critical to this opinion, the Center is named in honor of the judge and all proceeds of the fund raising event by the nonprofit organization will be used solely for the benefit the Center. The judge is not a member of the organization and the Committee understands the fund raising event does not concern the law, the legal system or the administration of justice.

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.

Canon 3 of the NCJC states "[a] judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office." Nevada Code of Judicial Conduct,

Canon 3. Rules 3.1 and 3.7 provide specific direction regarding a jurist's participation in extrajudicial activities in furtherance of fund-raising activities of civic organizations.

Rule 3.1 provides that when engaging in extrajudicial activities, a judge shall not participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality, or engage in conduct that would appear to a reasonable person to be coercive. Comment 4 instructs that "depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably or would do so to curry favor with the judge."

Rule 3.7(A) provides specific guidance with respect to fund raising activities, and distinguishes between fund raising activities for organizations concerned with the law, the legal system or the administration of justice, on one hand, and other types of nonprofit organizations on the other hand. With respect to non law-related organizations, Rule 3.7(A)(4) provides that a judge may only allow his or her title to be used in connection with a fund-raising purpose "if his or her activities would not appear to a reasonable person to be coercive or an abuse of the prestige of judicial office." Comment 3A further instructs that "a judge may not be a speaker or guest of honor at an event that is primarily for fund-raising or serve on an honorary dinner committee for an organization's fund-raising event, unless the judge is a member of the organization or has had a close association with the organization or the event being celebrated, or is a close friend of the person being honored." A judge is prohibited from personally soliciting funds on behalf of any nonprofit, with the sole exception of solicitations from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority. *See* Rule 3.7(A)(2). Finally, a judge should not use his or her title when serving on an honorary dinner committee unless comparable designations are listed for other persons.[1] *See* Rule 3.7, Comment 3A.

Rule 3.7(A) also states that a jurist's participation in the activities of nonprofit organizations must be consistent with the mandates of Rule 3.1, which provides that when engaging in extrajudicial activities, a judge shall not... participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality...."

The Committee has addressed the propriety of a judge participating in fund raising activities in prior opinions. *See* Advisory Opinion JE00-004; JE01-003; JE10-003. Generally, the Committee has taken "a stricter view", concluding "that judges should generally refrain from personal participation in fund-raising activities." Advisory Opinion JE 01-003. The Committee has opined that the general rule prohibits personal participation in fund-raising events in which the prestige of judicial office is used for fund-raising solicitation. *Id.* The Committee has opined that judges should not allow their names to be listed on honor committees where the event is primarily for fund raising purposes unless: (1) the judge is a member of the organization; or (2) has a close personal relationship with the organization or the event being celebrated; or (3) is a close personal friend of the person being honored. "Exceptions should be narrowly construed and one or more of them should be clearly

[1] The appropriate title for a retired, but actively serving retired district court judge is "Senior Judge". *See* S.C.R. 10.

the reason for the judge's decision to permit his or her name to be listed."

Based on the limited information presented, the Committee presumed that neither the fundraising organization nor the Center itself was an organization concerned with the law, legal system or administration of justice as contemplated by Rule 3.7(A)(1). Additionally, the Committee has assumed the judge is not a member of the organization engaged in fund raising for the Center. Therefore, the question becomes whether the judge has such a close association with the event being celebrated that use of the judge's name on an invitation would be permissible under Rule 3.7(A)(4). The Committee's prior opinions have not specifically addressed this issue.

The Committee had a number of preliminary concerns with a judge participating in fund raising activities for non-law related organizations. As a general rule, the Committee continues to believe that judges should refrain from personal participation in such fund-raising activities, and believes the exceptions to that general rule should be construed very narrowly. The Committee believes that where, in narrow circumstances, a judge may be allowed to list his or her name on an invitation to a non-law related fund raising event, the judge's ability to otherwise participate in the event is still strictly proscribed by limitations in Rules 3.1 and 3.7, including prohibitions on personally soliciting funds and prohibitions on activities that may appear to a reasonable person to be coercive or an abuse of the prestige of judicial office. So strong were these concerns as well as concerns regarding the appearance of a judge participating in fundraising activities in any context, that even in the narrow circumstances presented in this case, two panel members dissented in the Committee's final decision.

The Committee concludes that based on the facts presented, the judge has a sufficiently close association with the Center named after the judge that use of the judge's name on the fund raising invitation for the Center falls within the narrow exception of Rule 3.7A(4). It appears to the Committee that judge's close association with the Center is the clear reason for the request to use the judge's name on the invitation, and that the two are so closely connected that the addition of the judge's name to an invitation, the purpose of which is to celebrate and raise funds for a Center which is already named for the judge, falls within the very narrow exception contemplated by Rule 3.7(A)(4) and Comment 3A.

The Committee cautions the judge, however, that notwithstanding the ability to add his name to the invitation, the judge is still prohibited by Rule 3.7(A)(1) from personally soliciting funds for or soliciting membership in the Organization, and the use of the judge's title and the judge's activities at the fund raising event for the Center may not appear to a reasonable person to be coercive or an abuse of the prestige of judicial office. Moreover, the judge should not use his or her title as "Senior Judge" on the invitation unless comparable designations are listed for other persons. The Committee renders no opinion on any activities in connection with the fund-raising event other than the narrow question presented.

CONCLUSION

The Committee believes in these narrow circumstances a judge may permit his or her name to appear on an fundraising invitation for a non-law related organization celebrating and raising money to support a juvenile services center named in honor of

the judge. The judge is still prohibited by Rule 3.7(A)(1) from personally soliciting funds for or soliciting membership in the organization, and the use of the judge's title and the judge's activities at the fund raising event for the Center may not appear to a reasonable person to be coercive or an abuse of the prestige of judicial office.

REFERENCES

Nev. Code Jud. Conduct, Canon 3; Rule 3.1; Rule 3.7; Commentary [4] to Rule 3.1; Commentary [1] and [3A] to Rule 3.7; *Rule 5 Governing the Standing Committee On Judicial Ethics; Advisory Opinion JE 00-004; Advisory Opinion JE 01-003; Advisory Opinion JE 10-003;* S.C.R. 10.

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