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STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

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ADVISORY OPINION: JE14-004

PROPRIETY OF A JUDGE  
PARTICIPATING IN FUNDRAISING  
ACTIVITIES FOR HER CHILD'S  
SPORTS TEAM

ISSUE

May a judge volunteer to work in a concession stand at various public events where a percentage of the proceeds from sales are used to raise funds for a nonprofit organization for a child's sports team?

ANSWER

In the narrow circumstances presented, a judge may volunteer to work in a concession booth where the proceeds from sales are used as a fundraising activity for a non-law related organization. The judge is cautioned to remain cognizant of the limitations in Rule 3.1 regarding personally soliciting funds and to avoid conduct which would appear to a reasonable person to be coercive or an abuse of the prestige of judicial office.

FACTS

A judge has inquired whether it would be a violation of the Nevada Code of Judicial Conduct ("NCJC") for a judge to volunteer to work at a concession booth with other parents, to raise money for a nonprofit organization which supports a local children's sports team on which the judge's child plays. The concession booth sells food

and drinks at various public events throughout the year, and a percentage of the profits from the sales are donated back to the children's sports team. Parents working at the booth are not listed or otherwise identified by name to the general public, and all parents are invited to participate in the fundraising activity. Funds are used to reduce operating costs of the sports team, including registration fees, equipment and travel expenses.

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. Rule 3.7(A) 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 previously opined that Rule 3.7(A) also 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.<sup>1</sup>

The Committee has addressed the propriety of a judge participating in fund raising activities in prior opinions. See

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<sup>1</sup> For example, 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 for non-law related organizations “if his or her activities would not appear to a reasonable person to be coercive or an abuse of the prestige of judicial office.” Rule 3.7(A)(2) prohibits 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.

Advisory Opinion JE00-004; JE01-003; JE10-003; JE 13-006. The Committee has taken “a stricter view” of fund raising activities, 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 “exceptions should be narrowly construed and one or more of them should be clearly the reason for the judge’s decision” to engage in the fundraising activity. *Id.*

In this hypothetical, the Committee believes the critical issue is the scope of Rule 3.7A(1), which provides in relevant part that a judge may participate in activities sponsored by charitable or civic organizations, “*including but not limited to* the following activities: (1) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization’s or entity’s funds, *and assisting in fundraising, but only if* the organization or entity is concerned with the law, the legal system, or the administration of justice, and the judge does not personally solicit funds other than as permitted by Rule 3.7(A)(2).” Rule 3.7A(1)(emphasis added). The issue is whether the limiting language in 3.7(A)(1) and the term “but only” is intended to create a broad prohibition which prohibits a judge from “assisting in fundraising” in all circumstances other than for organizations concerned with the law, legal system or administration of justice (and even then, only to the extent permitted by Rule 3.7(A)(1) and Rule 3.1); or whether the permissive language and the term “including but not limited to” in Rule 3.7(A), and the conjunctive phrasing in Rule

3.7(A)(1) is intended to limit the restriction in Rule 3.7(A)(1) only to those circumstances involving law related organizations and only where the judge engages in all three activities -- assists in planning, participates in management of funds, and assists fund raising. If the former interpretation applies, the activity here would be prohibited, because it involves the assistance in fundraising for a non-profit organization that is not concerned with the law, legal system or administration of justice. If the latter interpretation applies, then the activity here would not fall within Rule 3.7(A)(1) and would be permitted "subject to the requirements of Rule 3.1."

In a 5-3 decision, the Committee concludes that Rule 3.7(A)(1) applies only to fundraising activities involving an organization concerned with the law, legal system or administration of justice, and even then only to circumstances where the judge plans, participates in management, and assists in fundraising as contemplated by Rule 3.7(A)(1). The majority believes the "including but not limited to" language in Rule 3.7(A) makes clear that Rule 3.7(A)(1) is only one example of permissible activities, and that any limitations within Rule 3.7(A)(1) are confined to the specific activity (fund raising for a law related organization) described in Rule 3.7(A)(1). The Committee further found it compelling that the judge in this hypothetical would not be directly soliciting funds for the organization, but instead would simply be working as a volunteer at a snack booth. The majority found significant the distinction between working as a volunteer at a snack booth the sales from which assisted the fundraising of the charity, and actively soliciting donations, and believed such distinction mitigated any concerns under Rule 3.1 regarding integrity or coercion.

The dissent finds persuasive prior Committee decisions which take "a stricter view" when interpreting fund raising activities, and believes that, notwithstanding the "including but not limited to" introductory phrase in Rule 3.7(A), Rule 3.7(A)(1) prohibits a judge from assisting in any fundraising activity unless the organization is involved in the law, legal system or administration of justice, and even then only to the extent permissible under Rule 3.7(A) and Rule 3.1.

The Committee concludes that based on the facts presented, the judge is permitted to assist the charity in fund raising by volunteering to work in a concession stand. The Committee cautions the judge, however, that notwithstanding the ability to indirectly assist in this type of fundraising activity, the judge is still prohibited by Rule 3.1 from personally soliciting funds for the organization in a manner which would appear to a reasonable person to be coercive or an abuse of the prestige of judicial office. 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 assist in fundraising for a non-law related organization by volunteering to work at a concession booth. The Committee cautions the judge to remain cognizant of the limitations in Rule 3.1 and to avoid conduct which may 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*; *Advisory Opinion JE 13-006*.

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Chairman