

FILED

JUN 30 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

DATE ISSUED: JUNE 29, 2023

ADVISORY OPINION: JE23-001

PROPRIETY OF A SITTING JUDICIAL OFFICER PARTICIPATING IN COURT PROGRAMS TO: (1) “ACCEPT” DONATIONS FROM COURT EMPLOYEES TO DONATE TO NON-PROFIT ORGANIZATIONS IN THE COMMUNITY; (2) PROVIDE SERVICE AS A GROUP BY VOLUNTEERING WITH VARIOUS SERVICE ORGANIZATIONS; AND (3) PARTICIPATE AS A GROUP IN VARIOUS TEAM-BUILDING EVENTS.

organizations in the community; (2) provide service as a group from the court by volunteering with various service organizations, which may include, but are not limited to, the Las Vegas Rescue Mission, the Three Square Food Bank or the Salvation Army; and (3) participate as a group from the court in various team-building events, which may include, but are not limited to, the “Corporate Challenge”, the Susan J. Komen Race for a Cure or the Las Vegas Santa Run. The judge seeks an advisory opinion from this Committee regarding whether the court’s involvement in the activities is appropriate under the Revised Nevada Code of Judicial Conduct (“NCJC”) or other applicable regulations.

ISSUES

May a sitting judicial officer participate in court programs to: (1) “accept” donations from court employees to donate to non-profit organizations in the community; (2) provide service as a group by volunteering with various service organizations; and (3) participate as a group in various team-building events?

DISCUSSION

A. The Committee’s Jurisdiction.

The Committee is authorized to render advisory opinions evaluating the scope and applicability of the NCJC. *Rules Governing the Standing Committee on Judicial Ethics, Rule 5.* Nothing in the Rules permits the Committee to opine on other rules, statutes, regulations or other law that may be applicable to the proposed court programs. *Id.* Accordingly, the Committee limits this opinion to consideration of the NCJC. *Id.*

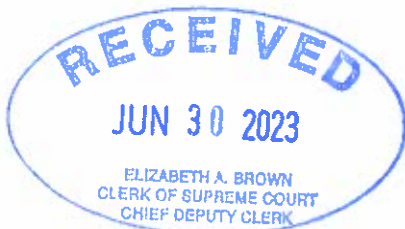
ANSWER

Yes, so long as a judge does not solicit the donations and the donee or voluntary or participatory events are vetted to avoid violations of the Revised Nevada Code of Judicial Conduct.

Further, Section I(A) of the Application Section of the NCJC states, with exceptions not relevant here, that “[t]he provisions of the Code apply to all judges.” The NCJC specifically applies to the conduct of judges, not the court as an

FACTS

The Standing Committee on Judicial Ethics (“Committee”) received an inquiry from a judge regarding the ability of a court to (1) “accept” donations from court employees, without “soliciting” or “asking” for the donations, to donate to non-profit



entity itself. As such, the Committee addresses the question of the propriety of a sitting judicial officer participating in the identified programs organized by a court.

B. “Acceptance” of Donations.

The first aspect of the judge’s inquiry, whether the court may “accept” donations, without “soliciting” or “asking” for them, for donation to non-profit organizations in the community, raises several sub-issues, including who will be “accepting” donations, “acceptance” versus “solicitation” of the donations, who will be making the donation, and to what entity the donation will be made.

The issues of who accepts the donations and solicitation versus acceptance of donations are similar to the issues addressed by the Committee in *Advisory Opinion* No. JE12-009 (Aug. 20, 2012). In that opinion, the Committee considered the propriety of a judge soliciting or accepting donations to be used as incentives for participants in a court administered drug court program. The Committee reviewed Canon 1, Rule 1.2 and Canon 3, Rules 3.1, 3.7 and 3.13. The Committee opined that while the NCJC prohibited the judge and members of the judge’s staff from soliciting donations, the NCJC did not prohibit the judge or members of the judge’s staff from accepting unsolicited donations. The Committee further opined that the NCJC did not prohibit staff of the court who do not serve a judicial function and are not identified with a specific judge from soliciting or accepting donations as long as it is clear that the solicitation is not made on behalf of a judge or group of judges and the donation to the court will not influence a judge.

A judge must, at all times, act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary. Canon 1, Rule 1.2. A judge must avoid impropriety and the appearance of impropriety. *Id.* A judge may accept unsolicited donations, if the donation does not raise an impropriety or the appearance of an impropriety or undermine the judge’s independence, integrity, or impartiality. However, a judge may generally not solicit donations, except in the limited circumstances identified in Canon 3, Rule 3.7 (which are not at issue here), because solicitations are generally coercive. Canon 3, Rule 3.1(D). Comment [4] to Rule 3.1 explains that “a judge’s solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk . . . [of being coercive because] the person solicited would feel obligated to respond favorably or would do so to curry favor with the judge.” Under Canon 3, Rule 3.7(A), a judge’s participation in charitable or civic organizations is subject to the limitations of Rule 3.1, including that a judge’s participation not create a coercive situation.

In this circumstance, the Committee questions the difference between “soliciting” donations and “accepting” donations. In *Advisory Opinion* No. JE12-009, the possibility of unsolicited donations was plausible. In that case, a business could provide a voluntary and unsolicited donation of gift cards to the court for use as an incentive for participants in a court administered drug court program out of a desire to drive participants (consumers) to the business in the hopes that the participant would spend more than the gift card amount or that the gift card would generate repeat business. In the present matter, the Committee does not find it plausible that employees of the court would spontaneously donate money to a fund to donate to non-profits without an email, flyer, or some other announcement, i.e., a solicitation, being sent to the court employees. The concerns raised in Rules 3.1 and 3.7, and in *Advisory Opinion* No. JE12-009, are no less valid when the people being

solicited are court staff rather than members of the public.

Further, whether the solicitation violates the NCJC depends on who is doing the soliciting. Consistent with *Advisory Opinion* No. JE12-009, the Committee concludes that a judge or a member of the judge's staff is prohibited from soliciting court employees for such donations. Rules 3.1(D) and 3.7(A)(1)-(3). However, the NCJC does not prohibit staff of the court who are not identified with a specific judge (e.g., chamber's staff) and do not serve a judicial function from soliciting or accepting donations as long as it is clear that the solicitation is not made on behalf of a judge or group of judges and the donation will not influence a judge. To further guard against the possibility of coercion, the judges and the court may wish to inform a judge of the total amount of any donations, but not whether or how much any individual court employee donated.

Turning to the donation of funds, the NCJC clearly contemplates a judge's donation of funds to non-profit entities. In Canon 4, Rule 4.2(A)(6)(d), the NCJC permits a judge's donation of unspent campaign funds to a tax-exempt nonprofit entity. Further, judges are encouraged to participate in charitable and civic non-profit organizations, which necessarily raises the possibility of a judge's personal contribution to a non-profit organization. Comment [1] to Rule 3.1, Rule 3.7. Assuming that donations for such a fund are solicited by appropriate court staff, the Committee does not find any prohibition in the NCJC against a judge's voluntary contribution to the fund or the court's donation of amounts from the fund to a non-profit organization.

The Committee cautions, however, that the donation or choice of donee should not otherwise violate the NCJC. For

instance, the donation should not cause impropriety or the appearance of impropriety for a judge, or undermine public confidence in the independence, integrity, and impartiality of the judiciary. Rules 1.2 and 3.1. The donation should also not compromise the ability of a judge to be fair and impartial, Rule 2.2, lead to the frequent disqualification of a judge, Rules 2.11 and 3.1, or violate the NCJC rules on political activities, Rule 4.1. A donation should also not be given to a non-profit organization that is currently or frequently engaged in adversary proceedings that would come before a judge. See Rule 3.7(A)(6). In light of these considerations, the court or the judge should carefully vet the choice of donee to avoid violations of the NCJC.

C. Volunteer Service and Team-Building Events.

The next aspects of the judge's inquiry are related; whether the court as a group, including the judges, could volunteer with various service organizations or participate as a group in various team-building events.

Several past Committee opinions have considered similar issues. In *Advisory Opinion* No. JE98-002 (June 15, 1998), the Committee opined that Canon 4C(3)(b)(iv) prohibited the use of a judge's name and the prestige of the judge's office for fundraising purposes for charitable organizations.¹ In *Advisory Opinion* No. JE06-012 (Aug. 29, 2006), the Committee opined that a judge could permit a fundraising event because the judge was not personally involved in the fundraising or the event. In *Advisory Opinion* No. JE10-010 (Oct. 5, 2010), the Committee opined that a judge may participate in community charitable or civic events where the judge does not engage in fundraising activities. In *Advisory Opinion* No. JE14-004 (July 18, 2014), the Committee opined that a judge was permitted to work at a concession stand that raised money for

¹ Canon 4C(3)(b)(iv) is now reflected in Canon 1, Rule 1.3 and Canon 3, Rule 3.7 of the NCJC. The Revised Nevada Code of Judicial Conduct became effective on January 19, 2010.

a nonprofit organization when the judge was not named or otherwise identified to the general public.

These advisory opinions involve the interplay between Rules 3.1 and 3.7. Rule 3.1 provides that except as prohibited by the NCJC, a judge may engage in extrajudicial activities, but the activities must not, among other things, interfere with the proper performance of the judge's judicial duties, lead to frequent disqualification of the judge, undermine the judge's independence, integrity, or impartiality, or be coercive. Rule 3.7 specifically encourages a judge's participation in nonprofit educational, religious, charitable, fraternal, or civic organizations.

Comment [3] to Rule 3.7 provides the rule and the exception. In general, "Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of [Rule 3.7(A)(4)]." Therefore, without more, a judge's participation, for example, in the Susan G. Komen Race for the Cure, whether individually or as a group of court employees, is not a violation of the NCJC.

Comment [3] to Rule 3.7 continues, however, that "before participating in other activities, a judge should analyze the overall event and evaluate whether the judge's activities may be viewed as coercive or an abuse of the prestige of judicial office." Thus, as with the donees above, a judge must vet the specific event to make sure that the judge's involvement in the event or with the nonprofit organization will not implicate the NCJC. This includes, but is not limited to: avoiding impropriety or the appearance of impropriety or undermine public confidence in the independence, integrity, and impartiality of the judge or the judiciary, Rules 1.2 and 3.1; avoiding the

abuse of the prestige of the office, Rule 1.3; avoiding activities that will interfere with the proper performance of the judge's judicial duties, will lead to frequent disqualification of the judge, or would appear to be coercive, Rule 3.1; or violate the NCJC prohibitions on political activities, Rule 4.1.

In addition, as discussed in *Advisory Opinion* Nos. JE98-002, JE06-012, JE10-010, and JE14-004, a judge should not permit his or her name or prestige to be used to support a fundraising event; for example, a judge's name should not be used as the team name when participating in volunteer or team-building events. A judge should also be cognizant of any possible coercion, not only on the public, but on court staff.

In light of these considerations, the Committee encourages the judge to carefully vet activities that the court as a group may participate in to avoid violations of the NCJC.

CONCLUSION

A judicial officer or his or her chambers staff may not initiate a fund at a court to "solicit" or "accept" donations from court staff to non-profit organizations in the community. However, the restriction on a judge and his or her chambers staff does not apply to staff of the court who are not identified with a specific judge and do not serve a judicial function. If such a fund is established, the NCJC does not prohibit a judge or his or her chambers staff from contributing to the fund or prohibit donations to non-profit organizations.

However, a donation to a non-profit organization must not otherwise violate the NCJC by causing impropriety or the appearance of impropriety, undermining public confidence in the independence, integrity, and impartiality of the judiciary, compromising the ability of a judge to be fair and impartial, leading to the frequent disqualification of a judge, violating the rules on

political activities, or being given to a non-profit organization that is currently or frequently engaged in adversary proceedings that would come before a judge.

A judicial officer may also participate in charitable and civic volunteer events or team-building events with court staff, but before participating in such events, “a judge should analyze the overall event and evaluate whether the judge’s activities may be viewed as coercive or an abuse of the prestige of judicial office.”

REFERENCES

Rule 5 of the Rules Governing the Standing Committee on Judicial Ethics; Revised Nevada Code of Judicial Conduct, Canon 1, Rules 1.2 and 1.3, Canon 2, Rules 2.2 and 2.11, Canon 3, Rules 3.1, 3.7, and 3.13, and Canon 4, Rules 4.1 and 4.2; and *Advisory Opinion* No. JE14-004 (July 18, 2014); *Advisory Opinion* No. JE12-009 (Aug. 20, 2012); *Advisory Opinion* No. JE10-010 (Oct. 5, 2010); *Advisory Opinion* No. JE06-012 (Aug. 29, 2006); and *Advisory Opinion* No. JE98-002 (June 15, 1998).

This opinion is issued by the Standing Committee on Judicial Ethics. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity requesting the opinion.



Todd E. Reese, Esq.
Committee Chair