

Nebraska Ethics Advisory Opinion 03-5

Question Presented –

May a judge participate as a member of a gala ball committee for a charitable organization where the judge's participation is limited to organizing, the judge's name would not appear on any literature regarding the fund-raising activity, and the judge would not personally solicit any funds?

Conclusion

A judge may participate as a member of the committee with the stated limitations and with the further limitations that the judge should not be recognized, give speeches, or be singled out in any way at any fund-raising events, issue press releases related to a fund-raising campaign, or make other public speeches or presentations related to the organization's fund-raising activities.

Statement of Facts

The judge has been asked to serve on the gala ball committee of a charitable organization. The organization seeks contributions to support Nebraska State Bar Association programs dedicated to the improvement of the legal profession and the administration of justice. The gala ball will be the major fund-raiser each year. The judge's inquiry already assumes limitations that the judge could not have his or her name appear on any literature concerning the fund-raising activity and that the judge could not personally solicit any funds. The judge states that his or her participation would be limited to organizing.

Applicable Code Sections

Neb. Code of Jud. Cond., Canons 2A, 2B, 4A, and 4C(3)(b)

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Ethics Advisory Opinions 90-1, 96-1, 00-1, 01-1, and 02-3

Discussion

Because several previous opinions have addressed related topics, the committee believes that little discussion is required. The previous opinions have discussed the specific code sections implicated in fund-raising activities. That analysis need not be repeated here.

It is the opinion of the committee that a judge may participate as a member of the committee responsible for organizing a charitable fund-raising activity, so long as the judge avoids both the direct solicitation of funds and the appearance of impropriety. To avoid the appearance of impropriety, the judge should limit his or her activities for the organization in a way that avoids any implication that he or she is involved in the solicitation of funds.

The code and commentary recognize two distinct yet related dangers concerning participation in fund-raising activities. First, the person being solicited may feel obligated to respond favorably to a solicitation because of the judge's authority and control in the judicial arena, particularly where that person is or expects to be involved in a proceeding before that judge or his or her court. Second, publicized association between the judge and the charitable organization may have the effect of lending the prestige of judicial office to the organization's fund-raising activities.

Where the judge's participation is limited so as to avoid these dangers, the judge complies with both the spirit and letter of the code. The particular limitations recognized by the question presented and the additional limitations noted in the conclusion are not exclusive; rather, they are the more commonly encountered situations.

The judge in this case may be able to provide considerable assistance to the group in "behind-the-scenes" organizing activities. Judicial office should not preclude the judge from such participation, as long as the judge avoids both direct solicitation and the appearance of impropriety.

Disclaimer

This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization requesting the opinion pursuant to appendix A of the Nebraska Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Ethics Advisory Committee.

APPROVED AND ADOPTED
BY THE COMMITTEE ON DECEMBER 4, 2003

Judge Randall L. Rehmeier
Judge John F. Irwin (not participating)
Judge Graten Beavers
Judge Douglas F. Johnson
Judge Stephen R. Illingworth
Judge John F. Steinheider
Judge William B. Cassel