

Nebraska Judicial Ethics Opinion 06-1

Questions Presented--

Can a newly appointed judge continue to serve as a trustee on a charitable foundation which does not solicit or accept donations and whose sole purpose is to donate to other charitable and nonprofit organizations?

Conclusion

The judge may continue to serve as a trustee on a nonprofit or charitable foundation. Consistent with prior opinions, a judge should not become a legal advisor to the foundation, participate in impermissible fundraising, or continue to serve should the foundation become frequently engaged in adversary proceedings.

Statement of Facts

A newly appointed judge has been a trustee on a charitable foundation since September 2004. The foundation neither solicits nor accepts donations. Incomes generated from the foundation's assets are distributed annually to other nonprofit and charitable organizations. Since its inception over 60 years ago, the foundation has been involved in only two lawsuits, one in 1972 and another currently on appeal from the judicial district where the newly appointed judge presides. It appears unlikely that this particular foundation will be involved in any additional litigation any time soon.

Applicable Code Sections

Neb. Code of Jud. Cond., Canons 2, 3, and 4

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Judicial Ethics Opinion 97-3

Nebraska Judicial Ethics Opinion 05-3

Discussion

The Code permits a judge to serve as an officer, director, or trustee of a nonprofit or charitable foundation subject to certain conditions previously discussed in Nebraska Judicial Ethics Opinions 97-3 and 05-3. The judge may not engage in the practice of law or give legal advice to the foundation. In addition, the judge may not participate in inappropriate fundraising and should avoid service with any organization that is regularly engaged in adversary proceedings.

The circumstance here, which differs from prior opinions, is that the foundation in question is a party to a lawsuit appealed from the judicial district where the newly appointed judge presides. Should the case be remanded for further proceedings, the judge and other judges who preside in the district must be careful not to "participate in any proceeding in which the judge's impartiality reasonably might be questioned." Canon 3E(1).

Under the facts presented, the judge may remain a foundation trustee without being in violation of the Nebraska Code of Judicial Conduct. However, as suggested in prior opinions, the judge should regularly evaluate the activities of the foundation to determine if continued participation is proper and permissible.

Disclaimer

This opinion is advisory only and is based on the specific facts and question submitted by the person 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 Judicial Ethics Committee.

APPROVED AND ADOPTED
BY THE COMMITTEE ON APRIL 4, 2006

*Judge John F. Irwin
Judge Stephen R. Illingworth
Judge John F. Steinheider
Judge Carlton E. Clark
Judge John A. Colborn
Judge Robert B. Ensz
Judge Lawrence D. Gendler*