

Nebraska Judicial Ethics Committee Opinion 09-1

Questions Presented—

May a judge or his wife donate money to a Foundation that the judge and his wife created. May a judge attend the annual fundraiser of the Foundation as a donor but not as a master of ceremonies? May the judge support the entity with his presence so long as he does not promote the entity or engage in the solicitation of funds? Should the judge remove his name and pictures from the Foundation website? May the Foundation Web site refer to his wife and “her husband” or his daughter and “her dad”?

May a judge participate in an annual fundraiser for the local community theater by performing at the event? May the judge use a local attorney as an accompanist for the event?

Conclusion

The judge and his wife may contribute to the Foundation. The judge may attend the fundraiser for the Foundation. The judge may not participate personally in the solicitation of funds or other fundraising activities for the Foundation. The judge should remove his name and pictures and any reference to his participation in the creation of the Foundation from the Foundation Web site if that Web site is used to facilitate the solicitation of funds.

The judge should not participate in an annual fundraiser for the local community theater by performing at the event.

Statement of Facts

Prior to his appointment, a judge and his wife created a Foundation after the death of their daughter. The judge does not serve on the board of directors and does not participate in the decisionmaking process of the board. The judge has historically acted as master of ceremonies at the annual fundraiser. The Foundation created a Web site for the entity which has pictures of the judge and

his family. The Web site contains a history of the entity that talks about its creation and the judge's family's involvement in the process. The judge's name is mentioned on the Web site but there is no reference to his status as a judge.

A local community theater has an annual fundraiser where they ask local residents who have participated in productions to come and sing. The event is advertised as a fundraiser. They identify the participants by name. The judge has historically performed at the event. The executive director of the theater is the mother of an attorney who performs as an accompanist for all of the performers including the judge.

Applicable Code Sections:

Neb. Code of Judicial Conduct § 5-202, Canon 2

Neb. Code of Judicial Conduct § 5-204, Canon 4

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Ethic Advisory Opinion 03-5

Nebraska Judicial Ethics Committee Opinion 07-1

Discussion

The judge and his wife are not prohibited by the Nebraska Code of Judicial Conduct from making monetary contributions to a nonprofit charitable foundation. When conducting all activities, a judge should keep in mind Neb. Code of Judicial Conduct § 5-204, Canon 4, which provides that a judge shall so conduct all extrajudicial activities as to minimize the risk of conflict with judicial obligations, and Neb. Code of Judicial Conduct § 5-202, Canon 2, which provides that a judge shall avoid impropriety and the appearance of impropriety in all of the judges activities. That being said, the Code specifically provides that a judge may serve as an officer, director, trustee, or nonlegal advisor of a charitable or civic organization not conducted for profit as long as it is not likely that the organization will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction

of which the judge is a member See § 5-204(C)(3) and § 5-204(C)(3)(a). The Code also allows a judge to assist an organization in planning fundraising, but provides that a judge shall not participate personally in the solicitation of funds or other fundraising activities. See § 5-204(C)(3)(b)(i). That means the judge here may help plan and organize the annual fundraiser in question and may attend the fundraiser, but should not personally participate at the fundraiser.

Previous ethics opinions have also addressed the issue of actual participation at fundraising events. Nebraska Ethics Advisory Opinion 03-5 concluded that a judge should not be recognized, give speeches, or be singled out in any way at a fundraising event. That opinion also stated that a judge should not issue press releases related to a fundraising campaign or make other public speeches or presentations related to an organization's fundraising activities. Nebraska Judicial Ethics Committee Opinion 07-1 concluded that a judge should not participate in a fundraising event by introducing the keynote speaker. Accordingly, in this case, although the judge may attend the Foundation fundraiser, he should not participate in the fundraiser by being recognized, giving speeches, or be singled out in any way.

Regarding the Foundation Web site, the judge should remove his name and photographs from the Web site if the Web site is used for fundraising or to facilitate fundraising. Even if photographs are used which do not identify the judge, presumably some people would have knowledge that the person in the photograph is a judge and that information could be ascertained by others. This would appear to be personal participation in a fundraising activity and may also be in violation of § 5-204(C)(3)(b)(iv) which provides that a judge shall not use or permit the use of the prestige of judicial office for fundraising or membership solicitation.

In accordance with the above discussion and references, the judge also should not perform at a fundraiser for a local community theater as the event is advertised as a fundraiser and the judge's name would be included on a list of performers.

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 Judicial Ethics Committee.

APPROVED AND ADOPTED BY THE COMMITTEE
ON July 21, 2009

*Judge John A. Colborn
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