

Nebraska Judicial Ethics Opinion 11-2

Question Presented --

May a judge serve as an ex officio member of the board of directors for the National Safety Council Greater Omaha Chapter provided that the judge's name does not appear on any documents for fundraising purposes?

Conclusion

The judge may serve as an ex officio member of the board of directors for the National Safety Council Greater Omaha Chapter provided that the judge's name does not appear on any documents for fundraising purposes and the judge complies with the limitations on fundraising activities as set forth at Neb. Rev. Code of Judicial Conduct § 5-303.7(A)(1) and (A)(2). Further, the judge should regularly evaluate the activities of the National Safety Council Greater Omaha Chapter to determine if continued participation is proper and permissible.

Statement of Facts

A county court judge has been asked to serve as an ex officio member of the board of directors of the National Safety Council Greater Omaha Chapter, which is a nonprofit organization. The judge's name will not appear on any documents for fundraising purposes.

Applicable Code Sections

Neb. Rev. Code of Judicial Conduct, Canon 3

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Judicial Ethics Opinion 97-3

Nebraska Judicial Ethics Opinion 00-1

Nebraska Judicial Ethics Opinion 05-3

Nebraska Judicial Ethics Opinion 06-1

Discussion

Although the judge interposing the question should review several sections of the Nebraska Revised Code of Judicial Conduct, such as § 5-303.0 and § 5-303.1, the prevailing section of the Code for this situation is § 5-303.7. The applicable provisions of § 5-303.7 state:

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, 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;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

....

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

....

(C) Subject to the preceding requirements, a judge may:

(1) Provide leadership in identifying and addressing issues involving equal access to the justice system; develop public education programs; engage in activities to promote the fair administration of justice; and convene or participate or assist in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.

The mission statement for the National Safety Council Greater Omaha Chapter was included with the question submitted, along with its bylaws as a nonprofit organization. The mission statement provides that its goal is, “To promote safety and health by providing programs, resource services, and education to prevent and reduce both the personal and economic loss associated with injuries, accidents, and health hazards.” Therefore, serving as an ex officio member of the board of directors of the National Safety Council Greater Omaha Chapter does not conflict with § 5-303.7(A)(6)(a) or (b). (Note: Part of the overall mission statement includes a section on promoting the use of seat belts as part of the safety plan, and as a county judge, seat belt violations would come before that court. However, there is no indication that the National Safety Council Greater Omaha Chapter specifically advocates that law enforcement criminally enforce laws that pertain to the use of seatbelts.)

Although subsection (C) of § 5-303.7 is new, subsection (A) of § 5-303.7 is similar to Canon 4 of the Nebraska Code of Judicial Conduct (effective through December 31, 2010) which has been reviewed in several prior Nebraska Judicial Ethics Opinions; 97-3, 00-1, 05-3, and 06-1. Nebraska Judicial Ethics Opinion 05-3 addressed a similar issue and stated in part:

The Code does not prohibit a judge from participating as a member, officer, or on the board of directors of any nonprofit educational, religious, charitable, fraternal, or civic organization that requires its members or board members to be a member of a specific religious affiliation or denomination. The commentary to Canon 4A states: “Judges should not become isolated from their community.” Although the Code does limit a judge’s ability to participate in certain types of extrajudicial activities, the Code does not require a cessation of all participation in community activities, including the activity of which the newly appointed judge is involved. In the matter now before the Committee, there is no indication that the judge is engaged in any inappropriate fundraising or other activity that would prohibit his continuing participation as a member of the board of directors of this nonprofit organization.

The judge may not practice law or provide legal advice to any association, foundation, nonprofit association, or other group. This prohibition extends to services for hire or services without compensation. In public service of the nature described, a judge must refrain from responding to any inquiry that may tend to produce legal advice on any issue that comes before this non-profit corporation and respectfully decline to answer such inquiries or act in the capacity of a legal advisor.

The commentary to Canon 4C advises that the changing nature of some organizations and of their relationship to the law makes it necessary for a judge to regularly examine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue his or her relationship with it.

Therefore, serving as an ex officio member of the board of directors of the National Safety Council Greater Omaha Chapter does not conflict with § 5-303.7(A)(1).

Lastly, a section of the mission statement for the National Safety Council Greater Omaha Chapter provides for the promotion of public safety through education which would fit within the permissible activities set forth by § 5-303.7(C).

Based upon the facts and materials provided to this Committee, there is no conflict with the Nebraska Revised Code of Judicial Conduct, effective January 1, 2011, for a judge to serve as an ex officio member of the board of directors of the National Safety Council Greater Omaha Chapter provided that the judge's name does not appear on any documents for fundraising purposes and the judge complies with the limitations on fundraising activities as set forth at § 5-303.7(A)(1) and (A)(2).

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 MAY 24, 2011

*Judge Robert B. Ensz
Judge Lawrence D. Gendler
Judge William B. Cassel
Judge J Russell Derr
Judge Linda S. Caster Senff
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