

# Nebraska Judicial Ethics Committee Opinion 12-2

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## *Question Presented—*

*May a judge's spouse feature their co-owned residence gardens in a garden walk, the purpose of which is to raise funds for a local community theater?*

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## **Conclusion**

The judge's spouse may include their co-owned residence gardens in a garden walk fundraiser under the facts presented.

## **Statement of Facts**

A judge's spouse has been asked to include their residence gardens in a garden walk to be used as a fundraiser for a local community theater. The judge's name would not appear on materials regarding the event, although his/her spouse's name would appear. Although the judge would participate in preparing the gardens, the judge would not be present for the walk itself; the judge's spouse would be present for the walk. Some of the local lawyers who appear before the judge are supporters of or participants in the theater. The community theater is a Nebraska nonprofit corporation.

## **Applicable Code Sections**

Neb. Rev. Code of Judicial Conduct, Canon 1 and § 5-301.0

Neb. Rev. Code of Judicial Conduct, Canon 3 and § 5-303.0

## **Discussion**

There have been several previous ethics opinions which have discussed the propriety of judicial involvement in fundraising. This case differs in that it is primarily the judge's spouse who would be actively involved in the fundraising. There is no specific prohibition in the Code regarding a spouse's participation in fundraising, but the underlying principles of the Code would still apply in determining whether the Code prohibits such activity.

The applicable Canons 1 and 3 provide as follows:

**§ 5-301.0. Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.**

.....

**§ 5-301.2. Promoting confidence in the judiciary.**

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

.....

**§ 5-301.3 Avoiding abuse of the prestige of judicial office.**

A judge shall not abuse the prestige of the judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

After applying the stated facts to Canon 1 and rules, it does not appear the judge's limited participation in the garden walk would call into question his/her judicial independence, integrity or impartiality. In regards to having his/her co-owned property included in a garden walk, and whether that fact alone would lend the prestige of the office to advance the economic interests of others, it does not appear to do so. The term "garden walk" suggests that other residences will be included, the judge's name and title will not be printed in the materials, and he/she will not be personally present at the walk. Such precautions lead to the conclusion that the judge's limited participation would not violate Canon 1 or the rules under Canon 1.

Canon 3 is more specific to extra judicial activities and provides as follows:

**§ 5-303.0. Canon 3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.**

The pertinent rules under that Canon provide as follows:

**§ 5-303.1. Extrajudicial activities in general.**

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However when engaging in extrajudicial activities, a judge shall not:

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality,
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Again, after applying Canon 3 and rules to the specific facts, it does not appear that the spouse's participation in the garden walk would interfere with the performance of the judge's duties or lead to his/her frequent disqualification. Although local attorneys who appear before the judge may support the community theater and may or may not attend the garden walk, it does not appear that anything about the garden walk itself would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

**§ 5-303.7. Participation in educational, religious, charitable, fraternal, or civic organizations and activities.**

This rule outlines several activities that are permissible; the relevant ones to this inquiry seem to be:

- (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 organization or entity in planning related to fund-raising, 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;

....

The theater, which is the subject of the fundraiser, is a nonprofit corporation and would seem to be governed by this rule. In regard to preparing the gardens, that activity seems to be permitted under § 5-303.7(A)(1). The next question is whether allowing his/her property to be involved in a fundraising activity would violate § 5-303.7(A)(2), which prohibits soliciting contributions. It does not appear that the judge would be soliciting contributions. The judge's co-owned home would be included, along with others in a fundraising event. The judge's name would not appear in the materials relating to the event and he/she would not be present. All of those factors lead to the conclusion that the judge's limited participation would not constitute solicitation.

In conclusion, it appears that the judge has taken several precautions to ensure his/her compliance with the Code and the mere fact that the judge's co-owned residence is included in a fundraising event under the circumstances as presented does not appear to be contrary to the Code of Judicial Conduct.

**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 Revised 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 MARCH 19, 2012

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