

NEBRASKA JUDICIAL ETHICS ADVISORY COMMITTEE

Advisory Opinion No. 89-8

SITUATION

A Judge of the Judiciary of the State of Nebraska, who is a member of a national service organization which is open to membership to all people of good character, desires to run for election as a member of the board of directors of that organization, serving the geographic area of Nebraska and surrounding states. He will be compensated with funds to cover expenses incurred through a dues assessment of the general membership, and requests an advisory opinion as to whether he may ethically seek the elective position and serve therein, and what limitations exist regarding the nature of effort he may undertake.

APPLICABLE CANONS

The following provisions of the Canons of the Nebraska Code of Judicial Conduct apply to the resolution of the question:

- (1) [A] judge should uphold the integrity and independence of the judiciary.
- (2) [A] judge should avoid impropriety and the appearance of all impropriety in all activities.
  - (2A) [A] judge should ... conduct himself ... at all times in a manner that promotes public confidence in the ... impartiality of the judiciary.
  - (2B) [A] judge should not allow family, social or other relationships to influence his or her judicial conduct or judgment.
  - (3C) [A] judge should disqualify himself or herself ... in a proceeding in which his or her ... impartiality might reasonably be questioned ... including but not limited to instances where:
    - (3c 1a): the judge has ... personal knowledge of disputed evidentiary facts concerning the proceeding.

(5B) A judge may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or her or will be regularly engaged in adversary proceeding in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not be a speaker or the guest of honor at an organization's fund-raising events, but may attend such events.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(6) A judge should regularly file reports of compensation received for quasi-judicial and extra-judicial activities.

GENERAL COMMENT

The committee has been advised by the judge that the service organization is not engaged in any gender discrimination and is not conducted for the economic or political advantage of its members, and that he well understands that he may not participate in any fund solicitation, but that his duties, if elected, would require him to represent the regional interest which he represents on the board of directors of the organization, and participate in exercising general control and supervision over all officers and committees of the organization and in the development of policy for it, as well as participate in other ongoing leadership functions.

Section B of Canon 5 expressly authorizes a judge to serve as an officer or director of a charitable organization such as the service organization here involved. As the commentary to Canon 5A suggests, a judge is not required to separate himself from all extra-judicial

activity and he should not become isolated from the society in which he lives. However, a judge's outside activities must not interfere with the official performance of a judge's duties or in any way detract from the dignity of his office. Assuming that the organization not only has a policy to permit all people of good character to join, but also that it actually practices no invidious discrimination on the basis of race, sex, religion or national origin, we believe that the judge may seek election to and serve as a director of that organization, subject to the following comments, and we point out the commentary to Canon 5B(1), which states that the changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of the organization to determine the propriety of continuing participation in the light of changed circumstances or policies.

Because the organization is directly and indirectly involved in fundraising, and discussions of those activities are part of its business meetings, we are of the opinion that the judge may participate in the general business discussions pertaining to fundraising and the planning of such activities, but may not participate in any activity directly involved in solicitation of funds, although he may attend such functions, and he may be listed on the organization's letterhead as an officer or director, provided other persons similarly serving are listed with their occupation, profession, or business association disclosed.

We are furthermore of the opinion that the judge may appropriately publicly express his opinion about the organization to which he belongs, provided that he conducts himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

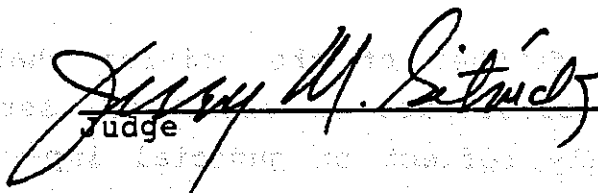
We are further of the opinion that while the Canons permit judges to participate in charitable service organizations that do not adversely reflect on judicial impartiality or interfere with a

judge's official duties, obviously the judge must disqualify himself in any case in which his decision could affect the organization and should not serve in any elective capacity if it appears likely that the organization will be engaged in proceedings that would ordinarily come before him in his official capacity as a judge, or if the organization is expected to be regularly engaged in adversary proceedings in any court. Futhermore, he must disqualify himself if the organization is engaged in litigation before him since he may either have personal knowledge of relevant matters or because he may be viewed by the public as acting improperly because of his membership in, and position of responsibility with, that organization. Otherwise, public confidence in the impartiality of the Judiciary may be affected.

We are further of the opinion that while the judge may serve as a director and may participate in the general business matters of the organization, he should refrain from giving any investment advice.

Lastly, the judge may accept compensation for his reasonable expenses in connection with his permissible organizational work, provided such reimbursement does not exceed a reasonable amount, does not exceed the amount which a member who is not a judge would receive for similar expenditures, and does not create an appearance of influence or impropriety, and further provided that such expense reimbursement covers only the costs of travel, food and lodging and is reported by the judge on the annual Judicial Financial Interest Statement in the precise detail required by that Statement.

FOR THE COMMITTEE:

  
Judge