

Nebraska Judicial Ethics Committee Opinion 16-1

Question Presented--

May a judge serve on a guardian ad litem task force formed by a Board of County Commissioners for the stated purpose of discussion, consideration, and making recommendations to the Board as to the method by which guardian ad litem should be appointed in juvenile court proceedings in that county?

Conclusion

Yes.

Statement of Facts

A County Board of Commissioners has asked a juvenile court judge to serve on a guardian ad litem task force to consider and review options for guardian ad litem appointments in juvenile court, i.e., court appointed, contracts, in-house guardian ad litem department, and to make recommendations to the county board in that regard. The judge requesting the ethics opinion indicates that there are to be no discussions of individual attorneys, attorney groups, and/or firms at the planned three meetings which will be held of the task force. The task force will include practicing private attorneys, county commissioners, representatives of the county attorney and public defender offices, a representative of the Department of Health and Human Services, and other community members.

Applicable Code Sections

Neb. Rev. Code of Judicial Conduct, Canon 1 and § 5-301.2

Neb. Rev. Code of Judicial Conduct, Canon 2 and §§ 5-302.2, 5-302.13

Neb. Rev. Code of Judicial Conduct, Canon 3 and §§ 5-303.2, 5-303.4

Neb. Rev. Code of Judicial Conduct, Canon 4

References in Addition to Nebraska Revised Code of Judicial Conduct

Neb. Rev. Stat., §§ 43-272 (Supp. 2015) and 43-273 (Reissue 2008)

Discussion

The Nebraska Juvenile Code provides for a court to appoint a guardian ad litem on its own motion or upon application of a party to the proceedings for the juvenile in specific circumstances set out in Neb. Rev. Stat. § 43-272 (Supp. 2015). Neb. Rev. Stat. § 43-273 (Reissue 2008) provides for the provision of fees for court-appointed guardian ad litem to be allowed by the county board of the county wherein the proceedings were had in the amount determined by the court. It is ultimately the right and responsibility of the court to appoint a guardian ad litem consistent with the statutes and rules governing guardian ad litem and their appointment.

Section 5-301.2 of the Neb. Rev. Code of Judicial Conduct provides that a judge 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. Comment 6 of that rule acknowledges: “A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.” Similarly, § 5-302.2 of Neb. Rev. Code of Judicial Conduct provides that a judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially.

Section 5-302.13 of Neb. Rev. Code of Judicial Conduct addresses administrative appointments by a judge, including assigned counsel and guardians. That section provides in pertinent part: “(A) In making administrative appointments, a judge (1) shall exercise the power of appointment impartially and on the basis of merit; and (2) shall avoid nepotism, favoritism, and unnecessary appointments[; and] (C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.”

Canon 3, § 5-303 of Neb. Rev. Code of Judicial Conduct addresses extrajudicial activities in general. Section 5-303.2 provides in pertinent part: “A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except: (A) in connection with matters concerning the law, the legal system, or the administration of justice; (B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge’s judicial duties”

Section 5-303.4 of Neb. Rev. Code of Judicial Conduct addresses appointments to governmental positions of a judge. It provides: “A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

Finally, § 5-303.7 of Neb. Rev. Code of Judicial Conduct provides in pertinent part:

(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 . . . including but not limited to the following activities:

. . . .

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice[.]

. . . .

(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.

(2) Endorse projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.

The provisions of the Nebraska Revised Code of Judicial Conduct set forth above would appear to allow a judge to serve on an advisory task force to discuss and make recommendations to the county board as to various methods by which guardian ad litem services can be provided in that county to children involved in juvenile court proceedings. The subject of the task force clearly relates to the law, the legal system, and the administration of justice, and a judge would seem uniquely qualified to offer a perspective on how such guardian ad litem services can be provided in a manner that is competent, is efficient, and will best serve the interests of children. Given that the task force will not discuss individual attorneys, groups of attorneys, or firms, as stated in the request for an advisory opinion, the concepts of fairness, preserving the impartiality of the judiciary, and avoiding bias would seem to be protected. If, however, the task force ventures into areas of guardian ad litem representation that enter into the political arena or other policy considerations which do not relate specifically to the law and administration of justice, a judge would be justified in withdrawing from further participation or declining to vote on any recommendation of the task force that is not clearly related to the law, the legal system, or the administration of justice. Canon 4 of Neb. Rev. Code of Judicial Conduct provides that a judge shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

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 FEBRUARY 12, 2016

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