

Nebraska Judicial Ethics Committee Opinion 21-1

Question Presented--

Does the Nebraska Code of Judicial Conduct permit a judge:

- 1. To allow a CASA Program to post pictures of the judge in court in an adoption proceeding (without identification of the child) on the Program's website, social media, newsletter, etc., presumably for the purpose of showing the beneficial value of the Program to the legal system and to promote the Program?*
 - 2. To allow a CASA Program to quote the judge on the beneficial value of the Program on the Program's website, social media, newsletter, advertising materials, etc., presumably for the purpose of promoting the program to the public for recruitment of volunteers?*
 - 3. To submit written correspondence to the local county board for the purpose of supporting funding of the CASA Program by the local county board?*
 - 4. To attend the CASA Program's annual fundraising event and dinner with the judge paying for the expense of the dinner? The event and dinner are attended by the CASA Program staff, volunteers, and members of the community. The primary purpose of the event is to raise funds for the Program.*
 - 5. To speak at the CASA Program's annual fundraiser event and dinner in support of the CASA Program without payment or benefit from speaking at the event and dinner?*
 - 6. To speak at educational sessions for volunteers to the CASA Program regarding the Court's expectations of the CASA volunteer?*
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Statement of Facts

Section §43-3706(2) provides in part that a court-appointed special advocate (CASA) program shall be an organization that screens, trains, and supervises CASA volunteers to advocate for the best interests of children when appointed by a court as provided in § 43-3710. § 43-3710 in part states, "The court order shall specify the volunteer as a friend of the court acting on the authority of the judge. The volunteer acting as a friend to the court may offer as evidence a written report with recommendations consistent with the best interests of the child...."

The local CASA Program has sought the engagement of certain county court judges and juvenile court judges in several activities outside the courtroom related to the CASA Program.

Applicable Code Sections

- Neb. Rev. Code of Judicial Conduct § 5-301.0 Canon 1
- Neb. Rev. Code of Judicial Conduct § 5-301.2
- Neb. Rev. Code of Judicial Conduct § 5-301.3
- Neb. Rev. Code of Judicial Conduct § 5-302.4
- Neb. Rev. Code of Judicial Conduct § 5-303.2
- Neb. Rev. Code of Judicial Conduct § 5-303.7

References in Addition to Nebraska Revised Code of Judicial Conduct

Neb. Rev. Stat. §43-3701 to 43-3720 (Reissue 2016)

Discussion

The judge has been contacted by CASA to allow CASA to post pictures of the judge in court in an adoption proceeding (without identification of the child) on the Program's website, social media, newsletter, etc. and to allow CASA to quote the judge on the beneficial value of the Program on the Program's website, social media, newsletter, and advertising materials.

CASA is a legislative creation by the Court Appointed Special Advocate Act in § 43-3701 to 43-3720. A CASA volunteer conducts independent examinations, reviews the permanency plan for a child, makes recommendations to the court with the best interests of the child and the child's family by a written report, monitors the case to ensure the child's best interests are being met, and makes every effort to attend all hearings, meetings, and other proceedings concerning the case. A CASA volunteer may be called as a witness by any party or the court.

The Code of Judicial Conduct does not prohibit the judge from allowing his or her picture taken and posted by CASA, nor does it prohibit the judge from allowing CASA to quote the judge. The judge, in considering and determining whether to give CASA permission to post the picture or quote the judge, should consider that the judge does not control the content of the CASA Program's website, social media, newsletter, etc. or the ultimate use of the picture or quote. Section § 5-303.7 Comment (2) highlights that even for law related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation or association with the organization would conflict with the judge's obligation to refrain from activities that would reflect upon a judge's independence, integrity, and impartiality.

The judge may attend the CASA Program's annual fundraising event and dinner with the judge paying for the expense of the dinner. Section §5-303.7 Comment (3) provides that mere attendance at an event, whether or not the event serves a fundraising purpose, does not constitute a violation of § 5-307(A)(4).

Section §5-303.7(2) limits the solicitation of contributions by a judge to members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority for educational, religious, charitable, fraternal, or civic organization and activities. A judge may not submit written correspondence to the local county board for the purpose of supporting funding of the CASA program by the local county board.

A judge may not speak at the CASA Program's annual fundraiser event and dinner in support of the CASA Program. Section §5-303.7 Comment (6) provides that a judge may be an announced speaker at a fund-raising event benefiting indigent representation, scholarships for law students, or accredited institutions of legal education. The legislation that created CASA also provided for grants for the CASA Program by the Supreme Court. Section §5-303.7(4) permits a judge to speak at an event of an educational, religious, charitable, fraternal, or civic organization, but if the event serves a fund-raising purpose, the judge may participate only if the fundraising is incidental, or the event concerns the law, the legal system, or the administration of justice -- provided participation does not reflect adversely on the judge's independence, integrity, or impartiality. The question presented states that fundraising is not incidental to the purpose of the annual fundraiser event.

A judge may speak at educational sessions for volunteers to the CASA Program regarding the Court's expectations of a CASA volunteer. A judge may speak, write, lecture, teach, and participate in other extrajudicial activities concerning the law, the legal system, the administration of justice, and nonlegal subjects, subject to the requirements of the Code of Judicial Conduct. Speaking to volunteers at educational sessions regarding the Court's expectations of the CASA volunteer is permitted. § 5-303.7(7).

A judge may be a resource, provide factual information, and appear and answer questions as permitted in § 5-303.2. A judge may testify at legislative or executive branch hearings or communicate with governmental officials less informally on matters affecting the Courts. However, a judge shall not vote on any substantive matters when appearing at a public hearing or consulting with an executive or legislative body. Such participation maintains the independence of the judiciary and maintains impartiality, while providing unique insights on questions of law, the legal system, and the administration of justice.

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 APRIL 23, 2021

*Judge J Russell Derr
Judge James C. Stecker
Judge Jeffrey M. Wightman
Judge Michael W. Pirtle
Judge Matthew L. Acton
Judge Mark J. Young
Judge Reggie L. Ryder*