

Nebraska Judicial Ethics Committee Opinion 24-2

Questions Presented –

1. *Can a Judge speak at an event for Domestic Violence Awareness Month put on by the Bridge which is a nonprofit domestic violence program? The event is not a fundraiser. Below is a brief description of the event.*
 - a. *The Bridge is planning their Annual Night of Hope Vigil which will happen in October during Domestic Violence Awareness Month. We are excited to invite you to speak as our Community Leader. Crossing our fingers it will work for you this year. The Night of Hope will be held on Thursday, October 24th from 6:30 pm to 7:00 pm. It will be inside at the Midland University's Olson Student Center. We usually have around 100 in attendance. It is a very special night for survivors, family, friends and our community.*
 - b. *It is a short, but powerful program. We start with a Welcome from one of our Board Members and then the Community Leader speaks, laying the foundation of the horrific impact domestic violence can have on the victim, children and on our community and the importance of our work to end it. The Community Leader speaks for 3-5 minutes. You would be followed by the Survivor Speaker who will share her story of experiencing domestic violence at the hands of her husband and children's father. We may be dedicating a Silent Witness for someone who lost their life due to domestic violence in our service area, but that isn't confirmed yet. The Fremont Middle School Show Choir will be there and will sing a couple songs during the program as well.*
2. *Can the Bridge which is a nonprofit domestic violence program put a picture of the judges and their staff on their Facebook page from when the Judges visited their building? The Facebook page is not used for any fundraising.*

Conclusion

No, the judge should not speak at the event as described in this particular inquiry. The Committee also advises against the judge and the judge's staff from having their photographs posted on the Facebook page of the Bridge. The overwhelming concern of the committee in this particular inquiry is that the Judge would not be able to ensure the impartiality, integrity, and independence of the court. Furthermore, being a speaker at this event or photographs depicting the judge's participation may give an impression that other groups are in a position to influence the judge.

Statement of Facts

The judge has been invited to speak at an event for Domestic Violence Awareness Month. The nature of any anticipated remarks by the judge would be to discuss the effects domestic assault has on individuals and the community. The event, which is not a fundraiser, is being organized by the Bridge, a nonprofit domestic abuse treatment center. The stated mission of the Bridge is the prevention and elimination of domestic violence and sexual assault.

Members of the Bridge work to enhance safety and promote equality in relationships. They are opposed to the use of violence to control the lives of others. The Bridge is committed to eliminating violence in the lives of women, children, and men through empowerment, education, and social change. Members of the Bridge sometimes appear in court, to sit with victims and provide applications for protection orders.

Judges and their staff visited the Bridge's facility. Inquiry has been made regarding whether pictures of the same may be included on the Bridge's Facebook page. Such Facebook page is not used for fundraising.

Applicable Code Sections

Preamble to the Code

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

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

Neb. Rev. Code of Judicial Conduct, § 5-302.0

Neb. Rev. Code of Judicial Conduct, § 5-302.4

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

Neb. Rev. Code of Judicial Conduct, § 5-303.1

Neb. Rev. Code of Judicial Conduct, § 5-303.7

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Judicial Ethics Committee Opinion 23-1

Nebraska Judicial Ethics Committee Opinion 14-1

Nebraska Judicial Ethics Committee Opinion 09-1

Nebraska Judicial Ethics Committee Opinion 06-6

Nebraska Judicial Ethics Committee Opinion 06-4

Nebraska Judicial Ethics Committee Opinion 01-1

Charles G. Geyh et al., *Judicial Conduct and Ethics* §§ 9.03 and 9.04 (5th ed. 2013)

Discussion

The preamble to the Nebraska Code of Judicial Conduct states:

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The Nebraska legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Nebraska Revised Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is

intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

The applicable Code sections read 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.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] 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.

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§ 5-302.0. Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

.....

§ 5-302.4. External influences on judicial conduct.

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

.....
§ 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.

§ 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.

COMMENT

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships

for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

....

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

(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 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;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the fund-raising 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.

(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; and

(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.

(B) A judge may encourage lawyers to provide pro bono legal services.

(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.

(3) Participate in programs concerning the law or which promote the administration of justice.

COMMENT

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations. An organization concerned with the law, the legal system, and the administration of justice may include an accredited institution of legal education, whether for profit or not for profit. A charitable organization may include a private family foundation which exists for charitable purposes.

[2] 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 in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono legal work, and participating in events recognizing lawyers who have done pro bono work.

[6] 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.

[7] 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 this Code.

“If the activities of the bar association in question pertain to advocating partisan positions on political and social issues that could come before the judge, judges must be more cautious about participating. This problem can be particularly acute with more specialized bars that align themselves with a particular class of litigant or political cause, where the judge’s involvement may give the appearance of favoritism... Attendance at such a group’s events is ordinarily less

problematic, because simple attendance at an annual dinner or like event does not imply allegiance to the organization’s policies. Even then, however, problems may arise if, for example, the judge regularly attends the events of one or more organizations aligned on one side of an issue in litigation but not the other, or if the judge-attendee is signaled out as an honoree or friend of the organization.” Charles G. Geyh et al., *Judicial Conduct and Ethics* § 9.03 at 9-14 to 9-15 (5th ed. 2013).

In reviewing the applicable sections of the Code, in conjunction with previous Nebraska Judicial Ethics Opinions, the overriding concern is the appearance of influence or bias. A brief view of the “Bridge” Facebook page shows previous posts that are asking for donations. While the judge’s picture would not be in the same post, the appearance of the judge on the Facebook page could give an improper appearance of support or endorsement for the Bridge. (See Nebraska Judicial Ethics Committee Opinion 23-1). Additionally, the participation in the event and speaking may lead to frequent disqualifications of the Court as an appearance of bias. The “frequent disqualification” language is routinely stated in the ethics opinions cited above. Based on the totality of the circumstances, this committee finds that the judge should decline the invitation to speak at this event. Furthermore, the judge should decline having photographs of the judge and staff posted on the Facebook page.

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 AUGUST 7, 2024

Judge Matthew L. Acton
Judge Julie D. Smith
Judge Michael W. Pirtle
Judge Travis P. O’Gorman
Judge Andrew R. Lange
Judge Chad M. Brown
Judge Bryan C. Meisner