

# Nebraska Judicial Ethics Committee Opinion 19-2

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## ***Question Presented--***

*Does the Nebraska Revised Code of Judicial Conduct permit a judge to act as the treasurer for a nonprofit organization (high school legion baseball team)?*

*The duties would be limited to maintaining the financial records of the legion team, collecting player fees, collecting income from the sale of concessions, collecting income from gate fees (entrance to tournaments and games), and paying the various bills to vendors, coaches, and umpires. This role would include the added language that the treasurer will not ask for any donations of any kind, nor will the treasurer be in charge of the charity fundraiser event (golf tournament) hosted annually by the organization.*

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## **Conclusion**

Assuming, without deciding, that the organization at issue is, in fact, a qualifying nondiscriminatory, nonprofit organization, the committee concludes that the Code permits a judge to serve as treasurer of such an organization, subject to multiple requirements and prohibitions.

## **Statement of Facts**

No facts, other than those contained in the question presented, have been provided.

## **Applicable Code Sections**

The applicable canons and sections of the Code are 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.

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### **§ 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.

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

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

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### **§ 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.

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**§ 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. . . . In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civil extrajudicial activities not conducted for profit, even when the activities do not involve the law. . . .

. . . .

**§ 5-303.6 Affiliation with discriminatory organizations.**

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

. . . .

**§ 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 . . . 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 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 . . . .

. . . .

(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.

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## COMMENT

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[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.

## Discussion

Sections 5-303.6 and 5-303.7 provide, in relevant part, that a judge may participate in activities sponsored by or on behalf of educational, fraternal, or civic nondiscriminatory, nonprofit organizations. This includes (1) assisting in planning related to fundraising and participating in the management and investment of the organization's funds and (2) serving as an officer of such organization so long as the organization will not likely be engaged in judicial proceedings before that judge or the court of which the judge is a member. However, a judge shall refrain from soliciting contributions for such an organization other than from the judge's family and other judges over whom the judge does not exercise supervisory or appellate authority. A judge shall also refrain from soliciting membership for such an organization and shall not participate in any event that serves a fundraising purpose, unless the participation is incidental.

A judge's service in a qualifying nondiscriminatory, nonprofit organization is subject to additional prohibitions and requirements set forth in § 5-301.0, § 5-301.2, § 5-301.3 and § 5-303.1. Summarized briefly, a judge must ensure that at all times the judge acts in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and that avoids impropriety or the appearance of impropriety. A judge shall not participate in activities that will interfere with the proper performance of the judge's judicial duties or that will lead to frequent disqualification of the judge, and a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, including an organization, or allow others to do so. Additionally, a judge shall refrain from engaging in conduct that would appear to a reasonable person to be coercive.

In the instant matter, the inquiring judge has not provided the committee with information about the high school legion baseball team's organization other than that which is contained in the question presented. The committee is thus unwilling to render an advisory opinion as to whether the organization at issue is in fact a qualifying nondiscriminatory, nonprofit organization. Assuming, without deciding, that the organization at issue satisfies the Code's requirements, the committee concludes that the Code permits a judge to serve as treasurer,

subject to the requirements and prohibitions set forth above. While judges are encouraged to participate in extrajudicial activities involving qualifying nondiscriminatory, nonprofit organizations, judges should regularly evaluate the activities of those organizations to determine if continued participation is proper and permissible.

**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 SEPTEMBER 17, 2019

*Judge J Russell Derr  
Judge James C. Stecker  
Judge Linda S. Porter  
Judge Jeffrey M. Wightman  
Judge Michael W. Pirtle  
Judge Matthew L. Acton  
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