

2007 Supplement to:

**Judges' Guide to
CASA/GAL Program Development**

2004 Edition

**A National CASA Association
Resource Library Publication**

**Supplement to Chapter 7: "Ethical Considerations for Judges
Involved with CASA Programs"**

Reviewing the Current Situation

Guest authors: Judge Thomas E. Hornsby Circuit Court Judge (ret.), Professor and Ms. Keely McCabe, Research Assistant, Florida Coastal School of Law, Jacksonville, Florida

Note: *This supplement includes reviews of selected opinions through June 2007. It is not offered or intended as a complete guide to state codes of conduct and relevant state opinions. The following information is offered to help judges in their examination and interpretation of their own state's Codes of Judicial Conduct. Readers are encouraged to refer to the complete Judges' Guide to CASA/GAL Program Development for additional information.*

Introduction:

This supplement is offered as an update to *Judges' Guide to CASA/GAL Program Development*, Chapter 7: "Ethical Considerations for Judges Involved with CASA Programs." It contains information previously published in the guide, as well as a selection of opinions that were not included in the guide and through June 2007. It is not intended as a prescriptive guide to govern the actions and conduct of judges.

As discussed in Chapter 7 of the *Judges' Guide*, before leading efforts to improve the legal system and the administration of justice in the juvenile courts, judges must first examine their state's Codes of Judicial Conduct and relevant commentaries, as well as published opinions of state judicial disciplinary agencies and decisions of their state courts.

This supplement will not discuss the applicability of the American Bar Association (ABA) Model Code of Judicial Conduct that was adopted in February 2007 and is now circulating through state supreme courts for consideration. If the 2007 ABA Model Code of Judicial Conduct is adopted by any of the states, the task of cross-referencing comparable provisions of the revised code with the existing state codes and the judicial advisory opinions will be monumental.

Research for this supplement included examining links to state judicial advisory websites published by the following states: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin, as well as the District of Columbia courts. Links to the state web sites can be found at http://ajs.org/ethics/eth_advis_comm_links.asp.

Contextual and Supplemental Information to Chapter 7 of the *Judges' Guide to CASA/GAL Program Development*

As stated in Chapter 7 of the 2004 edition of the *Judges' Guide*:

In order to address the ethical issues raised in Chapters 5 and 6, judges have several resources from which to choose to help determine whether they are in compliance with their respective state's Codes of Judicial Conduct. For example, the resource usually referred to in determining ethical conduct in leadership activities is the ABA Model Code of Judicial Conduct (2003) [abanet.org/cpr/mjc/mjc_home.html].

Judges also may look to their respective state's judicial advisory opinions. However, not all states have committees that issue ethics advisory opinions, and others do not have advisory opinions that contain relevant subject matter. Please note that the ethics advisory opinions included in this chapter are synopses of the official opinions and should not be relied upon or used in lieu of obtaining legal advice. When in doubt, judges may request an advisory opinion prior to, but not after, engaging in a particular activity. However, judges should be aware that these opinions are not binding on the disciplinary body of the state.¹

However in Rhode Island, the Code of Judicial Conduct states in pertinent part as follows: "Any judge who acts in accordance with an opinion issued by the Advisory Committee shall be presumed to have abided by the Canons of Ethics." Judges should always request an opinion before engaging in activities as the state advisory opinions are prospective in nature and do not apply to conduct engaged in prior to the issuance of the opinion. Judges should be wary of relying upon a published judicial opinion without seeking an opinion as to their specific concern as the opinions are fact-specific and may not apply to their factual scenario. Moreover, the judicial advisory opinions and decisions interpreting their respective Codes of Judicial Conduct vary from state to state.² Examples of various interpretations as to the issues raised in Chapters 5 and 6, and the corresponding ABA canons impacted, are as follows:

¹For example, the Florida Judicial Ethics Advisory Committee and its operational guidelines state: "The Committee shall render advisory opinions to inquiring judges relating to the propriety of contemplated judicial and non-judicial conduct, but all opinions shall be advisory in nature only.... An opinion of the Committee may, however....be considered as evidence of a good faith effort to comply with the Code of Judicial Conduct, provided that no opinion issued to one judge or justice shall be authority for the conduct, or evidence of good faith, or another judge or justice unless the underlying facts are identical."

² *Judges' Guide to CASA/GAL Program Development*, A National CASA Program Development, (2004 Edition), Chapter 7, *Reviewing the Current Situation*, pages 55-56.

May a judge participate in the creation, development and implementation of a CASA program?

The State of Washington Ethics Advisory Committee was presented with the following questions:

- May a judicial officer serve on a board of a non-profit organization to develop and administer a program for volunteer guardians ad litem?
- Would the use of the judicial officer's name on letterhead and advice as to sources of funds fall within "assist{ing} the organization in raising funds" as provided in CJC Cannon 2?
- What can a judge do to assist in raising funds?

The particular organization being referred to was a CASA/volunteer GAL organization. The letterhead in question would list names of directors and be used in fundraising. The committee held that a judicial officer could serve on the board of this organization, assist in fundraising planning and participate in the management and investment of funds without personally soliciting funds. In addition, the judicial officer's name could be listed on the organization's letterhead in the same manner as the other board members' names because involvement in the organization would contribute to the improvement of law, the legal system and the administration of justice.³

The New York Advisory Committee on Judicial Ethics determined that a judge may not provide a statement of endorsement for the local CASA organization for inclusion in a brochure used to recruit volunteers because it had been previously determined that a judge should not, on behalf of a nonprofit organization, solicit volunteers to do physical labor, solicit contributions or serve on committees or on the board of directors of the organization. Opinions 98-98; 98-119.⁴

The New York Advisory Committee on Judicial Ethics also opined that that the rules prohibit a judge from using or permitting the use of the prestige of judicial office for membership solicitation and that a judge may not personally solicit community leaders to serve as board members. The committee's decision prohibited the judge from identifying and recruiting a "Key Leader Board" through actions including issuing personal invitations printed on the judge's letterhead and chairing an organizational meeting of the nonprofit organization, which serves adolescents.⁵

May a judge advocate for the formation of a CASA program and encourage community support thereof?

The Florida Supreme Court Judicial Ethics Advisory Committee addressed the issue of whether a judge could attend an annual holiday party sponsored by the guardian ad litem program honoring its volunteers. The committee concluded that judges could attend the party with guests that might include circuit and county judges, Division of Children and Family attorneys, private family law attorneys and court administrative personnel.⁶

³State of Washington, Ethics Advisory Committee Opinion 94-06 (May 31, 1994).

⁴New York Advisory Committee on Judicial Ethics Opinion 02-80 (2005).

⁵New York Advisory Committee on Judicial Ethics Opinion No. 06-113 (September 7, 2006).

⁶Florida Supreme Court, Judicial Ethics Advisory Committee Opinion 2006-06 (March 10, 2006).

May a judge serve on the board of directors of a CASA program that represents children in the judge's court room?

The Kansas Judicial Ethics Committee determined that a district magistrate judge could serve as a director for a CASA program and is allowed to engage in limited fundraising activity.⁷ Conversely, the Nebraska Judicial Ethics Committee determined that the Code of Judicial Conduct would prohibit a judge from serving on a CASA board outside the judge's judicial district because: "Such service could create a perception that the judge's impartiality could be cast in doubt."⁸ The opinion also commented that serving on a CASA board may further be prohibited by code provisions prohibiting a judge's participation in direct fundraising.

The Texas Committee on Judicial Ethics held that judges may not serve on the board of a nonprofit organization that trains volunteers and employs professional staff to be appointed by the judge as guardians for minors or incapacitated persons.⁹

The Texas State Commission on Judicial Conduct in Public Statement No. PS-2006-1, issued on November 18, 2005, concluded that a judge that hears cases in which CASA volunteers appear as advocates, or who has appellate jurisdiction over such cases, cannot serve as a member of the board of directors of either a local or state CASA organization. The commission reasoned that "...judges who serve an organization like CASA would likewise endanger the public perception of the judge's impartiality for it would not be unreasonable for the public to believe that a judge who is affiliated with CASA would endorse and be partial to CASA and the CASA volunteer's recommendations." However, the commission noted "...that the appearance of impropriety in some cases could be cured with a full disclosure of the judge's affiliation with CASA, on the record, followed with the informed consent of the parties and their counsel to allow the judge to continue to hear and decide the case. Naturally, if a judge were asked to recuse from cases too frequently because of the relationship with CASA, that judge should step down from his or her membership on the Board. Canon 3B(1)."

The New Mexico Advisory Committee on the Code of Judicial Conduct opined that it would not be proper for a judge to serve on the board of directors of the CASA program in the judge's district. Though the judge stated that "due to my limited jurisdiction, the volunteers do not *ordinarily* appear before me..." the committee referred to Section 21-5003(a) (ii)—which prohibits a judge from being a director for an organization that "engaged frequently in adversary proceedings in the court of which the judge is a member." The committee reasoned that the rule applied because the judge was a part of a court in which CASA volunteers regularly appeared.¹⁰

However, the New Mexico Advisory Committee on the Code of Judicial Conduct determined that district judges may serve on a CASA Judicial Advisory Board because their duties as members of the

⁷ Kansas Judicial Ethics Advisory Opinions JE 52 (October 21, 1994).

⁸ Nebraska Judicial Ethics Opinion 05-1 (January 20, 2005).

⁹ Texas Committee on Judicial Ethics Opinion No. 240 (1999).

¹⁰ New Mexico Advisory Committee on the Code of Judicial Conduct Judicial Advisory Opinion 96-06 (May 29, 1996)

board are to speak at training sessions and report on representation provided by the volunteers. In support of their decision, the board cited Rule 25-500 (B) which allows a judge to speak, write, lecture or teach concerning the law and legal system. The committee concluded that it would be improper for the CASA directors to include the judges' names on the CASA letterhead because doing so implies that the judge is in a leadership position and involved in fundraising. This implication would give the appearance of impropriety when considered in light of Rule 21-500 (C) (3) (a) (I).¹¹

The Georgia Judicial Qualifications Commission determined that there is no conflict of interest and it is not improper for the wife of the senior partner of a part-time juvenile court judge to serve as director of a local CASA program. The commission based its determination on the lack of association between the juvenile court and the CASA program's staff and volunteers; the only connection identified was that the judge authorizes the assignment of CASA volunteers to cases. It was further noted that the CASA director would serve only as a coordinator of the program and would not be involved either directly or indirectly in providing advocacy services for children.¹²

May a judge communicate with financial supporters of the program or participate in fundraising activities?

The West Virginia Judicial Investigation Commission concluded that a judge could not provide the names of attorneys who had been involved in past judge-sponsored golf outings to CASA volunteers who were planning a fundraising event.¹³

The Kansas Ethics Advisory Panel determined that a judge may serve on the board of directors of the local United Way as long as the judge does not solicit funds or use the prestige of the judge's office for fundraising purposes; they also decreed that the judge should be aware of and comply with all the limits listed in Canon 4C(4).¹⁴

The Florida Judicial Ethics Advisory Committee determined that a judge could serve as a celebrity waiter or server at an annual breakfast for the local children's alliance because the event was held as a recognition rather than fundraising event. The organization in question was charging only a reasonable fee to defray the costs of the breakfast.¹⁵

¹¹ New Mexico Advisory Committee on the Code of Judicial Conduct Judicial Advisory Opinion No. 2001-02 (February 28, 2001)

¹² Georgia Judicial Qualifications Commission Opinion No. 199, Docket No. 95-61 (December 9, 2004).

¹³ West Virginia Investigation Commission (May 17, 2004).

¹⁴ Kansas Ethics Advisory Panel, Judicial Ethics Opinion JE 104 (January 12, 2001).

¹⁵ Florida Judicial Ethics Advisory Committee Opinion Number: 2-5-2009, (April 7, 2005).

Other Relevant Judicial Ethics Opinions

The Illinois Judicial Ethics Committee held that a judge may participate in an educational program designed to familiarize children with courtroom procedures prior to testifying as long as the program provided only general information and was not case or child specific.¹⁶

The Utah Judicial Ethics Advisory Committee determined that a judge may give presentations at a CASA awards program. Canon 4C(4) states that judges have professional responsibility to educate the public about the judicial system and that there may be some benefit to a judge appearing before the CASA organization. The CASA awards program would include both CASA volunteers and the local guardians ad litem. ¹⁷

¹⁶ Illinois Judicial Ethics Committee Opinion No. 05-03 (July 29, 2005).

¹⁷ Utah Judicial Ethics Advisory Opinion No. 06-6 (December 5, 2006).