

## CASA Programs and Judicial Ethics

Judge Leonard Edwards (ret.)

Judge Thomas Hornsby (ret.)<sup>1</sup>

### Introduction

The relationship between a Court Appointed Special Advocate (CASA)<sup>2</sup> program and a juvenile court judge presents ethical problems that other judges do not encounter. The goal of this edition of the *Judges' Page* is to identify those problems and discuss the considerations that a judge should take into account when facing them. There are several introductory caveats that apply to the entire discussion.

**First**, we will be referring to the American Bar Association (ABA) Model Code of Judicial Conduct (2007).<sup>3</sup> Not all states have adopted this most recent set of amendments. However, many of the code sections were not changed, so even in those states that have not adopted the new revisions, the analysis will be the same.

An analysis of the states that have adopted the 2007 Code or made revisions to it as of December 6, 2012, is found in an article entitled: **Status of State Review of ABA Model Code of Judicial Conduct (2007)**. Comments as to the article can be directed to John A. Holtaway, (312) 988-5298,

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<sup>1</sup> Judge Leonard Edwards is the Consultant for the Center for Families, Children & the Courts at the California Administrative Office of the Courts in San Francisco. He served on the Santa Clara County Superior Court for 26 years, retiring in 2006. Correspondence: [Leonard.Edwards@jud.ca.gov](mailto:Leonard.Edwards@jud.ca.gov). Judge Thomas E. Hornsby, J.D., is a Professor Emeritus at the Florida Coastal School of Law in Jacksonville, Florida, where he taught for 12 years. He served on the Lee County, Illinois, Circuit Court of the 15th Judicial Circuit for 23 years, retiring in 1995. Correspondence: [tomhornsby@aol.com](mailto:tomhornsby@aol.com). The co-authors are grateful for the advice and assistance of Colleen C. Manning, Assistant Director of the Florida Coastal School of Law library. The co-authors also wish to thank John A. Holtaway, lead senior counsel for Client Protection and Policy Implementation at the ABA and Kim Turner, Manager, Copywriting and Licensing of the ABA for their assistance and permission to link our article to the ABA Code of Judicial Conduct (2007).

<sup>2</sup> CASA programs are often referred to as GAL (Guardian ad litem) programs. Throughout this discussion, we will use the name CASA to refer to both CASA and GAL programs.

<sup>3</sup> MODEL CODE OF JUDICIAL CONDUCT (2007), available at [http://www.americanbar.org/groups/professional\\_responsibility/resources/judicial\\_ethics\\_regulation/mcjc.html](http://www.americanbar.org/groups/professional_responsibility/resources/judicial_ethics_regulation/mcjc.html)

[john.holtaway@americanbar.org](mailto:john.holtaway@americanbar.org). The article lists the jurisdictions in twenty-seven (27) states (AZ, AR, CA, CT, DE, DE, DC, HI, KS, ME, MN, MO, MT, NE, NV, NH, NM, NE, OH, OK, SD, TN, UT, WA, and WY) that have approved a revised Judicial Code. The status of the review of other states' judicial jurisdictions is also described in the article.<sup>4</sup>

## Overview of Relevant Canons in the ABA Model Code of Judicial Conduct (2007)

### Comparison of Canons and Rules – Old and New

“Renumbered new Canon 3 is basically the old Canon 4.

- It expands the canon to include ‘personal’ as well as ‘extrajudicial activities.’
- It replaces ‘conflict with judicial obligations’ with ‘conflict with the obligations of judicial office.’”<sup>5</sup>

Rule 3.1 is basically the old Canon 4A permitting extrajudicial activities subject to the listed prohibitions.

Rule 3.1(B) added a prohibition of participating in extrajudicial activities that will “lead to frequent disqualification of the judge.”<sup>6</sup>

### Commentary Rule 3.1:

- (1) This comment (1) enlarges the participation of extrajudicial activities that a judge can participate in to activities that are not related, . . . *as long as they are undertaken in connection with not-for-profit organizations.*
- (2) This comment (2) explains the importance to the community of judges being integrated into their communities by participating in . . . *both law-related and other extrajudicial activities.* . . .<sup>7</sup>

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<sup>4</sup> Center for Professional Responsibility, *Status of State Review of ABA Model Code of Judicial Conduct* (2007). AMERICAN BAR ASSOCIATION, 1, (January 10, 2013), [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/judicial\\_status\\_chart.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/judicial_status_chart.authcheckdam.pdf).

<sup>5</sup> Hornsby, Thomas E., *Reviewing the Current Situation*, Chapter 7: “Ethical Considerations for Judges Involved with CASA Programs,” 74, *JUDGES’ GUIDE TO CASA/GAL* (National CASA Ass’n Res. Library 2004 & Supp. 2010).

<sup>6</sup> *Id.* at 75

<sup>7</sup> *Id.*

## Rule 3.7(A)

Rule 3.7(A)(1) is similar to the first clause of Canon 4(C)(b)(1) of the old code.<sup>8</sup>

### “Commentary Rule 3.7:

- (1) This comment (1) explains that the activities permitted are applicable to all public and private nonprofit organizations.
- (2) This comment (3) explains that mere attendance at an event, whether or not the event serves a fundraising event, does not constitute a violation of paragraph (A)(4). (however, note that paragraph (A)(4) provides that if the event serves a fundraising purpose, the judge is permitted to be a featured speaker or may participate only if the organization or entity is concerned with the law, the legal system or the administration of justice.) It also clarifies a previous issue that judges are concerned about, namely, participating in certain minor activities undertaken in connection with those events, such as serving as an usher, food server or preparer, or performing similar functions at those fundraising events, and explains that those activities are not considered solicitation and do not present an element of coercion or abuse of judicial office.

While not prohibiting activities involving money, no permissible activities are mentioned involving the handling of money.”<sup>9</sup>

Comment (4) is similar to parts of the second paragraph of the commentary to Canon 4C(3)(b) of the amended 2003 code. The letterhead of the organization or entity may include a judge’s name and position even when used for fundraising or member solicitation purposes if it is not coercive and does not abuse the prestige of judicial office, as long as the judge is identified in the same way as other persons on the letterhead.<sup>10</sup>

### Authority of Comments:

Comments to the ABA *Model Code of Judicial Conduct* (2007) are included above to assist judges in interpreting the new rules. However, these comments are not to be interpreted as black letter law.

- (3) The comments that accompany the rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the rules. Therefore, where a comment contains the term ‘must’, it does not mean

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

that the comment itself is binding or enforceable; it signifies that the rule in question, properly understood, is obligatory as to the conduct in question.

- (4) Second, the comments identify aspirational goals for judges. To implement fully the principles as articulated in the canons, judges should strive to exceed the standards of conduct established by the rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office”.<sup>11</sup>

**Second**, while each state has established a code of judicial conduct, each of those codes is unique to that state. Any person relying on the analysis in this discussion should refer to his or her own state code for the exact language that would apply in his or her state. Furthermore, the analysis of the same language may vary from state to state. Whereas one state interprets certain judicial conduct as ethical, another state may refer to identical language and conclude that the judicial behavior was not ethical. Again it is critical to refer to one’s own state code and the interpretation that appellate courts and agencies have ascribed to it in order to understand how one’s own state has approached these issues.

Judges may look to their respective state’s judicial advisory opinions. However, not all states have committees that issue judicial ethics opinions. “[A]pproximately 43 states, the District of Columbia, and the U.S. Judicial Conference have judicial advisory committees.”<sup>12</sup> Please note that the ethics advisory opinions included in this article are synopses of the official opinions interpreting the judicial codes before the adoption of the ABA Model Code of Judicial Conduct (2007) 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.<sup>13</sup> 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

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<sup>11</sup> *Id.* at 75-76.

<sup>12</sup> Cynthia Gray, *Judges and Social Networks*, JUDICIAL CONDUCT REPORTER, Spring 2012, at 10.

<sup>13</sup> For 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, of another judge or justice unless the underlying facts are identical.” Petition of the Committee on Standards of Conduct for Judges, 327 So.2d 5 (Fla. 1976).

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.<sup>14</sup>

**Third**, what we write is not definitive. Our discussion and conclusions may be helpful in explaining why a judge should take one action or another, but the final interpretation of ethical conduct will always be the highest court in each particular state.

**Fourth**, please do not regard the article as legal advice. Consider it only for informational purposes. Nothing contained in this article is to be considered as the rendering of legal advice for specific cases or rules, and readers are responsible for obtaining such advice from their own legal counsel.

In spite of these caveats, we believe that our discussion will be useful to judges and others across the country. Our hypothetical cases may be identifying conduct that many judges are considering without thought of ethical issues. Our discussion may assist judges in checking their respective codes of judicial conduct for language and analysis that will assist them in determining whether to take certain actions. We hope that our discussion will help judges make more informed ethical decisions concerning their relationship to local CASA programs. We are convinced that traditional texts regarding ethics do not address many of the issues that we discuss. Finally, we hope that our discussion will persuade judges that they can take certain actions with regards to local CASA programs. We believe that we have a number of answers to the statement by made by some judges that “I can’t do that – it would be unethical.”

CASA directors and volunteers may also benefit from a reading of these materials. They are not trained in judicial ethics and may inadvertently ask a judge to take action that would be unethical. By becoming familiar with these hypothetical situations and the discussion that follows, they may be able to avoid making inappropriate requests.

## I. Court Appointed Special Advocate (CASA) Programs

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<sup>14</sup> Hornsby, *Reviewing the Current Situation* at 55-56.

CASA is a program that trains and supervises citizen volunteers who are then appointed by the local juvenile court judge to speak on behalf of a child who is under court jurisdiction. CASA programs exist in 49 states and the District of Columbia. CASA programs are also in various stages of development in other countries, including [Israel](#). They have different names including GAL, Child Advocates, Voices For Children, and several others. CASA programs provide critical support for abused and neglected children both in and out of the courtroom.<sup>15</sup> CASA was started by a juvenile court judge in 1977 and has been embraced by many local courts across the country. Currently there are 933 programs serving tens of thousands of dependent children.<sup>16</sup>

CASA programs are typically private not-for-profit organizations with close working relationships with the local juvenile court judge. Some CASA programs operate out of the local judiciary, some on a county or district level, while others are statewide organizations. CASA volunteers are trained pursuant to national and state standards and supervised by CASA staff members. They are appointed by the court and have specified duties in their roles as advocates for children.

There is nothing quite like a CASA program in the judicial branch. Judges traditionally decide cases and do most of their work on the bench. But creating, maintaining, and working with CASA programs raises unique ethical issues. The juvenile court judge's relationship to the CASA program is the focus of the discussion below.

## II. Hypothetical Situations

### A. Ethical Implications in Starting a CASA Program

As presiding judge of the juvenile court you would like to start a CASA program. Colleagues from around the state and across the country have convinced you that such a program would benefit the

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<sup>15</sup> Edwards *et al.*, *The Judicial Role in Creating and Supporting CASA/GAL Programs*, TODAY: JUVENILE AND FAMILY JUSTICE, Spring 2005, at 16-19.

<sup>16</sup> See generally CASA: COURT APPOINTED SPECIAL ADVOCATES FOR CHILDREN, <http://www.casaforchildren.org> (last visited Nov. 30, 2012)

children under court jurisdiction and provide the court with better information about those children. You take the following actions:

### **Hypothetical Situations**

1. You arrange for a meeting to take place on a Sunday and invite the public to attend. The purpose of the meeting is to start a CASA program.
2. You have the court executive produce fliers for the meeting and distribute them throughout the community.
3. You lead the meeting, first explaining the juvenile dependency system and then the need for volunteers to help start a CASA program.
4. You personally shake hands with each of those who appear at the meeting and tell them that volunteering to work with an abused child will greatly help those children.

Would you take any/all of these steps?

Are there any ethical issues that you should be aware of in this scenario?

### **Discussion**

These four actions mirror what Judge David Soukoup did when he created the first CASA program in King County (Seattle), Washington.<sup>17</sup> He may have even made up the fliers himself. People came from the community to see if they could help the juvenile court by working with the juvenile court judge. The steps outlined are aimed at creating resources for abused and neglected children and are consistent with the juvenile court judge's goal of serving the best interests of the children who appear in juvenile court. National organizations urge you to take these steps.<sup>18</sup> You are holding the meeting on a

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<sup>17</sup> One of the authors has heard Judge Soukoup describe how he created the first CASA program several times in public presentations. See also *History of National CASA, CASA: COURT APPOINTED SPECIAL ADVOCATES FOR CHILDREN* <http://www.casaboston.org/boston-casa-program/history-of-national-casa.aspx>.

<sup>18</sup> "The National Council of Juvenile and Family Court Judges and the National CASA Association support your efforts to be a community leader in improving outcomes for abused children through establishment of a CASA program in your community." Hornsby, *Reviewing the Current Situation*, at 54. "Judges should encourage the development of volunteer programs, particularly Court Appointed Special Advocate programs and foster care review boards, to assist children and

weekend so that it will not interfere with your judicial duties. This is consistent with the ABA Code of Judicial Conduct (CJC) that advises judges not to let other activities interfere with their judicial duties.<sup>19</sup> You appear at the meeting and explain the need for volunteers. You meet the people who appear and explain how their volunteering will assist the children under court jurisdiction. All of your actions are intended to improve outcomes for the children who appear in your dependency court. Prior to the adoption of the 2007 Code, ABA Model Code of Judicial Conduct (amended 1990-2003) provided that:

(B) Avocational Activities. A judge may speak, write, lecture, teach and participate in other activities involving the law, the legal system, the administration of justice and non-legal activities, subject to the requirements of this code.

Unfortunately, and against the recommendation of the National Council of Juvenile and Family Court Judges, ABA Canon 4B (2003) was eliminated from the ABA Model Code of Judicial Conduct (2007) and placed in the comment to Rule 3.1 with the following language as noted above:

To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate 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.<sup>20</sup>

It is the authors' opinion that a judicial advisory body would probably interpret this comment to Rule 3.1 in an advisory opinion as to whether a judge can advocate for the formation of a CASA program and encourage community support thereof. The Washington Ethics Advisory Committee opined that a judicial officer may "serve on a board for a nonprofit organization to *develop* and administer a program for guardian ad litem".<sup>21</sup> The facts presented to the committee involved the organization of a CASA program.

Ethical difficulties may arise when taking the next steps. Who will run the program? What will the judge's role be in reaching out to the community to attract volunteers? What role will the judge have in running the program? What will be the judge's relationship to the program? These and related issues will be discussed in the subsequent sections.

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families within the courts and the child welfare system." "Key Principles for Permanency Planning for Children," *Technical Assistance Brief*, Nat'l Council of Juvenile & Family Court Judges, Reno, October, 1999, Recommendation #7.

<sup>19</sup>A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office. MODEL CODE OF JUDICIAL CONDUCT Canon 3 (2007).

<sup>20</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1 (2007).

<sup>21</sup> Wash. Ethics Advisory Comm. Op. 94-06 (May 31, 1994).

**Sources:** Canons 1<sup>22</sup>, 2<sup>23</sup>, 3<sup>24</sup>, Rules 3.1<sup>25</sup> & 3.7.<sup>26</sup>

## **B. Ethical Implications in Recruiting CASA Volunteers**

As a juvenile court judge you would like to expand the number of volunteers in your local CASA program. To accomplish this you take the following steps:

### **Hypothetical Situations**

1. Go to several local service organizations (Rotary, Elks, etc.) to discuss the juvenile court, the CASA program and then ask the assembled persons to consider becoming CASA volunteers.
2. Ask the Jury Commissioner in your court to give each prospective juror a copy of a flier containing statements by you encouraging citizens to become CASA volunteers.
3. Personally ask retired persons who you know in the community to become CASA volunteers.
4. Ask your clerk, court reporter, and bailiff to hand out the same fliers to persons entering the courtroom, to attorneys who appear in your courtroom, and to their friends and family.
5. Post fliers outside your courtroom, other judge's courtrooms and in the clerk's office.
6. Appear on a television talk show to discuss CASA and the need for volunteers.
7. Appear on a television spot in your robe talking about CASA with information on how to contact the program written below your presentation.
8. Create a flier with your picture in it, sitting robed with a child in your lap.

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<sup>22</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

<sup>23</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2007).

<sup>24</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 3 (2007).

<sup>25</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1 (2007).

<sup>26</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.7 (2007).

9. Be featured on a poster distributed throughout the community which shows a picture of you robed and pointing a finger outward saying. “I WANT YOU TO VOLUNTEER TO BE A CASA!”

Would you take any of these actions?

Are there ethical issues with regard to any of these proposed actions?

## Discussion

The previous section addressed the propriety of taking steps to create a CASA program. This set of scenarios covers the ethical and legal limits you face as you attempt to expand the local CASA program.

Both Canon 3<sup>27</sup> (Rules 3.1<sup>28</sup> & 3.7<sup>29</sup>) and the Advisory Committee Commentary encourage judges to contribute to the improvement of the law, the legal system, and the administration of justice. Rule 3.2 Extrajudicial Activities in General and Comments 1 and 2 are helpful as stated:

### COMMENT

[1] ...judges are permitted and encouraged to engage in educational, . . . charitable, . . . or civic activities not conducted for profit, even when the activities do not involve the law.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and further public understanding of and respect for courts and the judicial system.<sup>30</sup>

In scenario (1) you are speaking to community service organizations about the needs of foster children and the value of CASA. This is ethical behavior. You can also say to those in attendance that they can become a part of the CASA program and give details regarding how they may volunteer for the local CASA program. You could point out that there are many ways to participate in the program, whether as a volunteer, a board member, an in-kind service provider, an event volunteer, or a committee member. You should not demand or order that anyone become a volunteer – that would be using the

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<sup>27</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 3 (2007).

<sup>28</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1 (2007).

<sup>29</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.7 (2007).

<sup>30</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1, cmts. 1 & 2 (2007).

power of the judiciary improperly.<sup>31</sup> However, you can certainly direct potential participants to contact the appropriate CASA representative; this action would be taken in response to a question from the audience. A better approach would be to have a CASA representative as a part of your presentation or present in the room while you are speaking. That person can let the audience know how to contact someone concerning participation in the CASA program.

In scenario (2) you have asked the jury commissioner to pass out leaflets describing the CASA program to all prospective jurors. This request will place a new responsibility on a public employee. A better approach would be to have the leaflets available in the jury waiting room for anyone interested in the CASA program. In this way you would not be asking a court employee to undertake a task that is not a part of his or her job description. You should inform the presiding judge of your effort to ensure that he or she approves. It may be that the presiding judge would not approve of passing out fliers. The Texas Committee on Judicial Ethics, in an opinion involving the issue of “whether a judge may permit brochures in her courtroom and other public areas in the courtroom that announce the availability of a county bar sponsored lawyer referral service”, concluded that “by informing the public of this bar sponsored service, the judge is improving the administration of justice.”<sup>32</sup>

In scenario (3) you are considering asking retired persons in the community whom you know to become CASA volunteers. This would be ethical if you were to phrase your request something like . . . “now that you are retired, have you considered some volunteer work? I can let you know about some volunteer work that would greatly assist the court.” This is consistent with Rule 3.7(A)(6)<sup>33</sup> & (B)<sup>34</sup>. However, when soliciting participation by citizens, you should not solicit persons if they are likely ever to appear before the court you serve on. Rule 3.1(B) added a prohibition of participating in extrajudicial activities that will “lead to frequent disqualification of the judge.”<sup>35</sup> Scenario (4) is similar to scenario (2) except that you are asking your court staff to give out information about the CASA program. The analysis is the same as in scenario (2). You should not be asking court employees to undertake tasks that are beyond what they are required to do pursuant to their job description. You could ethically consider making available descriptive material in the court waiting room or posting it on a court bulletin board. That is the suggestion in scenario (5). The only caution in this scenario is that you should clear your

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<sup>31</sup> See MODEL CODE OF JUDICIAL CONDUCT R. 3.1(D) (2007).

<sup>32</sup> Tex. Comm. On Judicial Ethics Op. 203 (1996).

<sup>33</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.7(A)(6) (2007).

<sup>34</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.7(B) (2007).

<sup>35</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1(B) (2007).

proposed action with the presiding judge of the superior court. This is not an ethical caution, but judges should always keep their presiding or supervising judge informed about such actions.

In scenarios (6) and (7) you are considering going on television or radio to promote the CASA program. These are ethical actions so long as you act consistently with the cautions listed in Rule 3.1.<sup>36</sup> The same cautions apply as did with public speaking as in scenario (1).

However, the fact that you are going to wear a robe on the television appearance raises an additional ethical issue. The question is whether your conduct “promotes public confidence in the integrity . . . of the judiciary.”<sup>37</sup> Judicial robes are more than simply a choice of clothing – they represent the office of the judiciary. Out-of-court use of the robe is permitted at ceremonial events such as investitures and weddings. Whether wearing a robe is ethical may depend on the location of the filming. It would be improper in the television studio, but likely proper if taken while you were sitting on the bench. The issue is so close that the safest practice is to appear without a robe. After all, you will be identified as a judge, so the robe is unnecessary for purposes of identification. The Texas Committee on Judicial Ethics, when asked whether a judge may appear on television in a public service announcement asking people to volunteer their time as readers for the nonprofit organization Recording for the Blind and Dyslexic, concluded that the judge “. . . may make such announcement so long as the prestige of judicial office is not used,” but the judge should not wear a judicial robe when making the announcement.<sup>38</sup> In contrast, The State Bar of Michigan Standing Committee on Professional and Judicial Ethics stated that a judge may not serve as a “celebrity guest” on a radio show with an accompanying of prerecording of “a public service announcement to be broadcast on the program urging the public to join the organization, or agreeing to be interviewed about why the judge is a member and why it is important to join, because such activities amount to personal solicitation. . .” which is prohibited by the Michigan Code of Judicial Conduct.<sup>39</sup>

In scenario (8) it is suggested that you appear in a photograph with a child sitting on your lap as a part of a promotion for the CASA program. This may not be upholding the integrity of the judiciary (Rule 1.3<sup>40</sup>), and it may be seen as demeaning the judicial office (Rule 1.2<sup>41</sup>). Judges do not normally

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<sup>36</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1 (2007).

<sup>37</sup> MODEL CODE OF JUDICIAL CONDUCT R. 1.2 & 1.3 (2007).

<sup>38</sup> Tex. Comm. On Judicial Ethics Op. 253 (1999)

<sup>39</sup> Mich. Ethics Comm. Op. J1-87 (1994)

<sup>40</sup> MODEL CODE OF JUDICIAL CONDUCT R. 1.3 (2007).

take children on their laps in court. On the other hand, the robe “merely furnishes a convenient way to identify the subject of the photograph as a judge.” The photograph of the robed judge with a child lends prestige to the CASA program, a program concerning the improvement of the law. No private interest is being promoted by this photograph. However, even if done in good taste, this photograph may demean the judicial office as picturing a judge in an unusual non-judicial pose. You should decline this suggestion.

Scenario (9) is similar to scenario (8) in that it involves appearing off-the-bench in a robe for a poster promoting CASA. This involves unethical behavior in that you would not be promoting the integrity of the judiciary, and this would be improper behavior in violation of Canon 1<sup>42</sup>, as well as demeaning the judicial office in violation of Rule 1.2.<sup>43</sup>

The New York Advisory Committee of 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.<sup>44</sup>

Opinions 98-98; 98-119.<sup>45</sup>

**Sources:** Canon 1<sup>46</sup>, Rule 1.2<sup>47</sup> & 1.3<sup>48</sup>.

## C. Ethical Implications of Fundraising

You have been told that your CASA program needs additional funding to strengthen the program and provide more volunteers for dependent children. You are considering taking the following steps:

### Hypothetical Situations

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<sup>41</sup> MODEL CODE OF JUDICIAL CONDUCT R. 1.2 (2007).

<sup>42</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

<sup>43</sup> MODEL CODE OF JUDICIAL CONDUCT R. 1.2 (2007).

<sup>44</sup> Hornsby, *Reviewing the Current Situation* at 65.

<sup>45</sup> N.Y. Advisory Comm. on Judicial Ethics Op. 02-80 (2005).

<sup>46</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

<sup>47</sup> MODEL CODE OF JUDICIAL CONDUCT R. 1.2 (2007).

<sup>48</sup> MODEL CODE OF JUDICIAL CONDUCT R.1.3 (2007).

1. Help organize the local CASA fundraiser.
2. Have your name appear on the fundraiser invitation.
3. Ask all judges, court commissioners, and court employees to attend the event.
4. Appear at the local CASA fundraiser.
5. Be honored at the CASA fundraiser.
6. Speak at the fundraiser.
7. Urge attendees to support the CASA program.
8. Offer a dinner for eight at your home in the CASA auction.
9. Offer to caddy for the highest bidder at the CASA auction.
10. Assist in the management and investment of the funds raised at the event.
11. Write a letter supporting a CASA grant application.

Are there legal or ethical issues with regard to any of these proposed actions?

## Discussion

The relationship between the juvenile court judge and fundraising for a CASA organization involves several complex ethical issues. In scenario (1), you may assist in the planning of a fundraising event.<sup>49</sup> In scenario (2), your name may appear on the invitation, but only as a committee member, not as the person requesting that persons attend the event.<sup>50</sup>

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<sup>49</sup> See MODEL CODE OF JUDICIAL CONDUCT R. 3.7(A)(1) (2007).

<sup>50</sup> See MODEL CODE OF JUDICIAL CONDUCT R. 3.7, cmt. (4) (2007).

You may ask judges to attend in scenario (3), but not subordinate judicial officers or court employees. That would be using the power of the judicial office improperly by personally participating in the solicitation of funds.<sup>51</sup>

You may appear at the fundraiser as in scenario (4), and be honored as in scenario (5)<sup>52</sup> so long as you do not personally solicit funds or engage in conduct that appears to lend prestige of the office to the organization. You may also speak at the event in scenario (6), so long as you do not personally solicit funds and otherwise comply with the canons.<sup>53</sup>

In scenario (7) you are asking the attendees to support the CASA program. That would likely be interpreted as a violation of Rule 3.7(4)<sup>54</sup> as a personal solicitation of funds. In the alternative, you could explain the need for volunteers and what those volunteers can do to help the children in the juvenile dependency court without violating any ethical standards. This would be appropriate so long as the audience did not include persons who are likely to appear before the court on which you serve. Moreover, the solicitation cannot appear to be coercive in nature and violate Rule 3.1(D).<sup>55</sup>

Both offering a dinner at your house as in scenario (8), and offering to caddy for the highest bidder as in scenario (9) are violations of Canon 1.<sup>56</sup> Participation in these events would demean the judicial office.

Scenario (10) asks if you can help with the management and investment of the funds raised at the event. These are ethical actions pursuant to Rule 3.7(A).<sup>57</sup> You can also write letters of support for CASA and other service provider grant applications. The letters must be factual, stating your personal knowledge of the program and the need for the grant. CASA is an organization that helps improve outcomes for children before the court, thus it comes within the provisions of Rule 3.7.<sup>58</sup>

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<sup>51</sup> See MODEL CODE OF JUDICIAL CONDUCT R. 3.1(D) and 3.7(A)(s) (2007).

<sup>52</sup> See MODEL CODE OF JUDICIAL CONDUCT R. 3.7(A)(4) (2007).

<sup>53</sup> *See Id.*

<sup>54</sup> *Id.*

<sup>55</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1(D) (2007).

<sup>56</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

<sup>57</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.7(A) (2007).

<sup>58</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.7 (2007).

The judicial advisory opinions are in conflict.<sup>59</sup> In Nebraska, for instance, the Ethics Advisory committee concluded that “a judge may write a letter of support for a funding grant on behalf of a victim assistance or CASA agency based on . . . personal knowledge.”<sup>60</sup> The committee determined that such a written recommendation would not be considered a direct participation by the judge in fundraising.<sup>61</sup> The Florida Judicial Ethics Advisory Committee, however, determined that a judge may not write a letter to a grant provider which encourages “the funding of a local nonprofit organization that provides victims of domestic violence with advocates.”<sup>62</sup> The committee was concerned that by writing such a letter, a judge (would be indirectly assisting litigants or witnesses (alleged victims) that would appear before the Court) and that this “could affect the perception of impartiality.”<sup>63</sup>

“Examples of other activities that may be permitted or not in a particular state are as follows:

- Judges may serve or be listed on an honorary committee of a charitable fundraising event.<sup>64</sup>
- Judges may be celebrity guests (e.g. “celebrity chef,” “celebrity bagger”) at fundraising events.<sup>65</sup> Judges may be a guest of honor at a fundraising dinner.<sup>66</sup> But see Illinois Judicial Ethics Committee Opinions Nos. 01-03 (May 1, 2001) (Judge may not be a guest of honor at a non-fundraising event held by a nonprofit organization whose employees regularly testify in adversary proceedings before that judge)<sup>67</sup> and 1-05 (May 1, 2001) (judge may not be a speaker or guest of honor at . . . [charitable organization’s] fund raising events).<sup>68,69</sup>

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<sup>59</sup>Hornsby, *Reviewing the Current Situation* at 1.

<sup>60</sup>Neb. Ethics Advisory Op. 98-4 (August 19, 1998).

<sup>61</sup>*Id.*

<sup>62</sup>Fla. Sup. Ct. Judicial Ethics Comm. Op. 2002-09 (June 3, 2002).

<sup>63</sup>*Id.*

<sup>64</sup>Ind. Comm’n on Judicial Qualifications Op. 1-96. *But, see* Nev. Standing Comm. on Judicial Ethics & Election Practices Op. JE01-003 (April 5, 2001) (a judge may not allow his or her name to be listed on an honorary committee for primarily fund-raising activity or event).

<sup>65</sup>Tex. Comm. on Judicial Ethics Op. 220 (1997); *see also* Kan. Judicial Ethics Advisory Op. JE-78 (July 11, 1997). *But see* Ill. Judicial Ethics Comm. Op. No. 99-1 (January 12, 1999) (a judge may not serve as a celebrity bagger for the United Way).

<sup>66</sup>Tex. Comm.on Judicial Ethics Opinion No. 252 (1999).

<sup>67</sup>Ill. Judicial Ethics Comm. Op. 01-03 (May 1, 2001)

<sup>68</sup>Ill. Judicial Ethics Comm. Op 1-05 (May 1, 2001)

<sup>69</sup>Thomas E. Hornsby. & Dulce B. Pouralifazel, *Reviewing the Current Situation in JUDGES’ GUIDE TO CASA/GAL PROGRAM DEVELOPMENT*, 59 (Nat’l CASA Assoc. Resource Library Publication 2004 & Supp. 2010).

**Sources:** Canon 1<sup>70</sup>, and Canon 3<sup>71</sup>, Rule 3.1<sup>72</sup>, 3.7<sup>73</sup>.

## **D. Ethical Implications of Participating in Administrative and Board Activities of the CASA Program**

In the previous sections we have discussed the creation of a CASA program and some of the issues regarding the judge's efforts to raise money to support the program. In this section, we will explore other aspects of the judge-CASA relationship.

### **Hypothetical Situations**

Your community has established a CASA program. It has an executive director and a board of directors. Your local CASA board of directors has asked you, a juvenile court judge, to participate in the following activities.

1. Become a member of the board of directors.
2. Become an advisory member of the board of directors.
3. Attend all board meetings as a friend of the board.
4. Believing it would improve the local program, the board asks you to attend a National CASA conference with the board paying for all of your expenses. They also invite your spouse to join you on the trip.
5. Would it make any difference in scenario (4) if you were also asked to speak at the national conference?
6. Meet with the CASA director from time to time to discuss administrative issues such as the quality of CASA reports and the role of the advocates in court.

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<sup>70</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

<sup>71</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 3 (2007).

<sup>72</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1 (2007).

<sup>73</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.7 (2007).

Are there ethical issues related to any of these activities?

How would you respond to these requests from the board?

## Discussion

While you may be an enthusiastic supporter of the CASA program, you must be cautious in responding to some of the requests that the board of directors makes of you. For example, in scenario (1), they ask you to become a member of the board. This would be improper based on Rule 3.7(A)(6)(a) and (b)<sup>74</sup>. While CASA is an agency devoted to the improvement of the law, the legal system, and the administration of justice and it is a non-profit organization, CASA does become engaged in judicial proceedings “that would ordinarily come before the judge”, and “will be engaged frequently in adversary proceedings in the court of which the judge is a member.”<sup>75</sup> You should decline the request to become a member of the board of directors.

Judicial advisory opinions differ in their interpretation of this issue.

The Kansas Judicial Ethics Committee determined that a magistrate judge could serve as a director for a CASA program and is allowed to engage in limited fundraising activity. 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.”<sup>76</sup>

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.<sup>77</sup> The Texas Committee on Judicial Ethics<sup>78</sup> 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 of minors or incapacitated persons.<sup>79</sup> 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

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<sup>74</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.7(A)(6)(a) and (b) (2007).

<sup>75</sup> See MODEL CODE OF JUDICIAL CONDUCT R. 3.7(6) (2007).

<sup>76</sup> Thomas E. Hornsby, & Dulce B. Pouralifazel, *Reviewing the Current Situation* in JUDGES’ GUIDE TO CASA/GAL PROGRAM DEVELOPMENT, 66 (Nat’l CASA Assoc. Resource Library Publication Supp. 2010) citing Kan. Judicial Ethics Advisory Op. JE-52 (October 21, 1994) and quoting Neb. Judicial Ethics Op. 05-1 (January 20, 2005).

<sup>77</sup> Hornsby, *supra*, note 5, at 66.

<sup>78</sup> Tex. Committee on Judicial Ethics opinion No. 240 (1999)

<sup>79</sup> Hornsby, *supra*, note 5, at 66.

directors of either a local or state CASA organization. The commission reasoned “judges who serve an organization like CASA would 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).”<sup>80</sup>

Also, the New Mexico Advisory Committee on the Code of Judicial Conduct<sup>81</sup> 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. “[T]he committee referred to Section 21-5003(a)A(ii) – which prohibits a judge from being a director for an organization that “engaged in adversary proceedings in the court of which the judge is a member.” The committee reasoned that the rule applied because the judge was part of a court in which CASA volunteers regularly appeared.”<sup>82</sup>

Nevada’s Standing Committee on Judicial Ethics has reasoned that a judge may not serve on the CASA Foundation Board.<sup>83</sup> “The CASA Foundation is a non-profit organization that promotes, administrates and engages in fund-raising activities to support the CASA program.”<sup>84</sup>

You should not become a member of an advisory board as suggested in scenario (2). Even if being a member did not compromise the appearance of impartiality Canons 1<sup>85</sup> and 2<sup>86</sup>, CASA does engage in adversary proceedings in the court, thus you would be in violation of Rules 3.1<sup>87</sup> & 3.7<sup>88</sup>.

However, the New Mexico Advisory Committee on the Code of Judicial Conduct<sup>89</sup> determined that district judges may serve on a CASA Judicial Advisory Board because their duties as members of the board are to speak at training sessions and report on

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<sup>80</sup> *Id.*

<sup>81</sup> N. M. Advisory Comm. on the Code of Judicial Conduct Judicial Advisory Opinion No. 96-06 (May 29, 1996)

<sup>82</sup> Hornsby, *Reviewing the Current Situation* at 66.

<sup>83</sup> Nev. Standing Comm. Judicial Ethics Advisory Op. JE11-009 (Sept. 2011).

<sup>84</sup> *Id.* at 1.

<sup>85</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

<sup>86</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2007).

<sup>87</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1 (2007).

<sup>88</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.7 (2007).

<sup>89</sup> N.M. Advisory Comm. on the Code of Judicial Conduct Judicial Advisory Op. 2001-02 (February 28, 2001)

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 the 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 involved in fundraising. This implication would give the appearance of impropriety when considered in light of Rule 21-00 (C) (3) (a) (I).<sup>90</sup>

You may ethically attend all board meetings as in scenario (3), so long as these meetings do not interfere with your judicial duties.<sup>91</sup> Your attendance may give the appearance that you were an advisor to the board, but your primary reason for going should be to coordinate the CASA program with juvenile court operations. You may discuss administrative matters with the director of the program just as you discuss such matters with the director at the children's services agency and lawyers' offices. You should advise all board members that you cannot discuss specific cases and that the board should not discuss specific cases while you are in attendance.

In scenarios (4) and (5) the CASA board proposes to send you to a National CASA event. You can certainly attend the National CASA Conference as many judges do, but you should not accept the CASA board's offer of paying for your (or your spouse's) expenses. That would be a violation of Rule 3.1(C).<sup>92</sup> You would be giving the appearance that a party who regularly appears in your court has a special relationship with you. However, you would be permitted to receive reimbursement for your expenses from National CASA were you to be a speaker at the conference<sup>93</sup>. You would have the obligation to report the receipt of such reimbursement<sup>94</sup>.

Meeting with the CASA director to discuss administrative issues as in scenario (6) presents no ethical issues so long as the conversation is confined to that type of issue. These meetings are similar to the administrative meetings you may ethically hold with the director of children's services, the chief probation officer, and the heads of the attorney offices.

**Sources:** Canons 1<sup>95</sup>, 2<sup>96</sup>, & 3<sup>97</sup>, Rules 3.1<sup>98</sup>, 3.14<sup>99</sup>, 3.15<sup>100</sup>.

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<sup>90</sup> Hornsby, *Reviewing the Current Situation* at 67.

<sup>91</sup> See MODEL CODE OF JUDICIAL CONDUCT R. 3.1(A) (2007).

<sup>92</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1(C) (2007).

<sup>93</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.14 (2007).

<sup>94</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.15 (2007).

<sup>95</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

<sup>96</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2007).

<sup>97</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 3 (2007).

## **E. Ethical Implications in Participating in CASA Training and Ceremonies**

The local CASA program would like you to assist the program in several ways, including the following:

### **Hypothetical Situations**

1. Swear in new volunteers in the courtroom while wearing your robe.
2. Speak to the volunteers at the swearing in ceremony.
3. Be photographed with individual volunteers as they are sworn in.
4. Permit the volunteers to sit in your courtroom to observe dependency proceedings.
5. Lead a training for the volunteers. The training would include tips on how to write effective reports, how to be an effective witness in court, and suggestions on what a volunteer should not do in or outside the court.
6. Sit as a judge in a mock trial where volunteers will be testifying and give advice to the attendees.

Are there ethical issues related to any of these proposed activities?

### **Discussion**

Training of CASA volunteers is required by National CASA, by state statute, and by local CASA programs. It is a critical part of volunteer education. Often local attorneys, social workers, service

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<sup>98</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1 (2007).

<sup>99</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.14 (2007).

<sup>100</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.15 (2007).

providers and CASA staff conduct some of the training for the volunteers. Of course the judge is an important part of the juvenile dependency court and would be a valuable person to participate in the trainings. However the judge, once again, must be careful about that participation.

In scenarios (1) through (4), you are participating in the formal aspects of the training program. There is no ethical violation in swearing in the volunteers (after all, they are court appointed),<sup>101</sup> speaking to them at the ceremony, having a picture taken with each volunteer, or in permitting them to observe court proceedings.

However, there are ethical concerns in both scenarios (5) and (6). In each case you are training and critiquing volunteers who later may testify in court. This may give the appearance of favoring CASA volunteers when they do testify in court<sup>102</sup>. While you may offer advice to volunteers about their conduct in court or the contents of their reports, you should not formally train them and should not coach or offer advice that might cast doubt on your ability to act impartially. However,

The Utah Judicial Ethics Advisory Committee<sup>103</sup> 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 guardian ad litem.<sup>104</sup>

In addition, while not involving a CASA program, “The Illinois Judicial Ethics Committee<sup>105</sup> 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.”<sup>106</sup>

**SOURCES:** Canons 1<sup>107</sup> & 3<sup>108</sup>, Rules 1.2<sup>109</sup> and 3.1(C)<sup>110</sup>

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<sup>101</sup> NATIONAL CASA, JUDGES’ GUIDE TO CASA/GAL PROGRAM DEVELOPMENT 48-49 (2004).

<sup>102</sup> See MODEL CODE OF JUDICIAL CONDUCT R. canon 1 & 3.(2007). See also MODEL CODE OF JUDICIAL CONDUCT R. 1.2 & 3.1(C) (2007).

<sup>103</sup> Utah Judicial Ethics Comm. Op. 06-6 (December 5, 2006).

<sup>104</sup> Hornsby, *Reviewing the Current Situation* at 68.

<sup>105</sup> Ill. Judicial Ethics Comm. Op. 05-03 (July 29, 2005).

<sup>106</sup> Hornsby, *Reviewing the Current Situation* at 68.

<sup>107</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

<sup>108</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 3 (2007).

<sup>109</sup> MODEL CODE OF JUDICIAL CONDUCT R. 1.2 (2007).

<sup>110</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.1(C) (2007).

## **F. Ethical Implications in Judicial Oversight of the Functioning of the CASA Program**

As a presiding juvenile court judge you also have some responsibilities overseeing the operations of the local CASA program. Some of these responsibilities can raise both legal and ethical issues.

### **Hypothetical Situations**

1. As dependency cases come to court, you have noticed that some of the CASA volunteers do not seem to have much training.
2. While CASA volunteers regularly appear in your court, you do not understand how the CASA director selects which children will be assigned a CASA.
3. You have received two letters from CASA volunteers complaining about the way the program is operated.
4. At one of your regular court systems meetings, one of the attorneys complains that a CASA volunteer has been discussing his case with people outside the court system.

Are there legal or ethical issues involved in these situations?

How would you respond?

### **Discussion**

Although the local CASA program may be organized and operated independently of your superior court, as presiding judge of the juvenile court, you have important oversight responsibilities to the program. In scenario (1) you notice that some of the CASA volunteers do not seem to have adequate training. You should meet with the CASA director to determine if there is a training program for the volunteers and whether that program is conducted regularly. If you are not satisfied with the training program, you should consider working with your CASA director and National CASA.

In scenario (2) you are concerned about the selection process employed by the CASA director. You may have the responsibility of overseeing the creation and implementation of a procedure for the selection of volunteers. You should meet with the director and oversee and ultimately approve the written procedure for the selection of cases and the appointment of CASA volunteers in your court.

In scenario (3) you have received letters from volunteers complaining about the management of the program. In many states the CASA program must develop a written grievance procedure and it is helpful if you approve of that plan. In some states the judge must approve of the grievance procedure.<sup>111</sup> If that is the case, you should meet with the CASA director to review that plan and then direct the complaints to that procedure. Should your local program not have a plan, you should work with the director to develop one. Your state Administrative Office of the Courts may be able to assist the program. The plan should be submitted to you for your approval.

In scenario (4), the complaint by an attorney that a CASA volunteer has been discussing the facts of a case with people outside of the dependency process, if true, would be a violation of the law<sup>112</sup>. In some states you have a responsibility under the law to “adopt a written plan governing confidentiality of case information case records, and personnel records.”<sup>113</sup> If this is the case, you should meet with the director to discuss the allegation that an advocate has revealed confidential information. Normally, the director would have the primary responsibility to take disciplinary action. If there is no written plan in place, you should tell the director to write one, possibly with the assistance of National CASA or your state Administrative Office of the Courts. Then you should review the plan and, if appropriate, approve of it.

In all four of these scenarios we suggest that you meet with the director to discuss the situation. This is not an *ex parte* communication as you will not be discussing a pending or impending case. You will be discussing issues relating to the administration of the program, consistent with judicial ethics.

**Sources:** Canons 1<sup>114</sup>, 2<sup>115</sup>, & 3<sup>116</sup>, Rule 3.5<sup>117</sup>

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<sup>111</sup> CAL. RULE OF CT R. 5.655(i)(1).

<sup>112</sup> See MODEL CODE OF JUDICIAL CONDUCT R. 3.5 (2007).

<sup>113</sup> CAL. RULE OF CT. R. 6.655(m).

<sup>114</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

<sup>115</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2007).

<sup>116</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 3 (2007).

<sup>117</sup> MODEL CODE OF JUDICIAL CONDUCT R. 3.5 (2007).

## **G. Ethical Implications in Judicial Oversight of the Role of the CASA Volunteer**

CASA volunteers can be of great assistance to the court, but it is important to understand the limitations on their conduct.

### **Hypothetical Situations**

1. You would like a particular CASA volunteer to search for members of the child's extended family.
2. You ask a CASA volunteer to consider taking a child to Disneyland.
3. You ask a CASA volunteer to visit a child's school, talk with her teachers, and report back on her educational needs.
4. You appoint a CASA volunteer as the Educational Representative for the child he is representing.
5. You ask a CASA volunteer to be a back-up to drive her dependent child to school when the foster parent is sick.

Are there legal or ethical issues involved in these actions?

What would you do?

### **Discussion**

CASA volunteers are "officers of the court" and have unique responsibilities unlike those of attorneys or social workers. You should look upon CASA volunteers as someone who can provide "independent, factual information to the court" regarding the cases the CASA has been assigned. CASA volunteers are investigators who can provide critical information about the needs of the child before the court.

In scenario (1), you certainly could ask a CASA volunteer to help in the search for extended family members. The volunteer may have better access to family members and certainly would have more time than a social worker. Some CASA offices conduct family finding searches for children that their volunteers represent. There is no guarantee that the search would be productive. Perhaps you should first talk with the director about what resources the CASA program can offer their volunteers to search for extended family members.

In scenario (2) you should not permit the volunteer to take the dependent child to Disneyland. There is a prohibition against volunteers taking their child to the volunteer's home, and a trip to Disneyland would likely involve an overnight in a hotel or some other location with the volunteer. Two of the policies behind this rule are to avoid the appearance of becoming too involved in the child's life and to avoid situations where accusations of misbehavior might occur. If, however, the trip was part of a group activity and the details of travel and housing were satisfactory, you might approve of the trip. All parties in the child's case should be given notice of any such trip before you consider granting the request. On the other hand day trips to museums, parks, or other locations that would be educational or enjoyable for the child should be encouraged.

In scenario (3) you are asking a CASA volunteer to become acquainted with a child's progress in school, to meet with teachers, and to track the child's educational development. This is an ideal use of a CASA volunteer, one that many programs have supported. You can make such a request. Moreover, you could also meet with the director and discuss how the program could support volunteers who are tracking a child's educational development. One CASA program asked a retired teacher to provide advice to advocates about how best to work with a child's school.

In scenario (4) you are considering appointing a CASA volunteer as a child's educational representative pursuant to federal law. In order to make this appointment, you must first conclude that the biological parents are not in a position to make education-related decisions for their child. If you reach that conclusion, you can remove their educational rights and then appoint the CASA volunteer or some other appropriate person as the child's educational representative. In many situations, the CASA volunteer is an ideal person to fulfill the responsibilities of an educational representative. You must be certain that the CASA volunteer is given a copy of your order that the volunteer will have some proof of his authority when he or she goes to the child's school.

Scenario (5) involves the lack of resources to meet the complex needs of a foster child. Often a foster parent is unable to transport a child to an appointment, get a child to court, or be transported to school or to a visit. Should you order a CASA volunteer to provide that type of service? No, you should not. The duties of a CASA volunteer are carefully spelled out in your state law. While you can ask the volunteer to investigate, become the child's educational representative, and fulfill other functions, you should not order him or her to provide transportation. The volunteer may provide such services on his or her own, but should be free to make that decision.

**Sources:** Canons 1<sup>118</sup>, 2<sup>119</sup> & 3<sup>120</sup>.

## **H. Ethical Implications of Ex Parte Communications**

The last seven sections have dealt with creating and expanding CASA programs, supporting them, working with them as they recruit and train volunteers, and your responsibilities overseeing the program. CASA volunteers are also members of the community. You will meet them in various social settings, and they may feel that they can approach you as they would an acquaintance. These encounters may confront you with ethical issues. Consider the following:

### **Hypothetical Situations**

You are a popular judge with the CASA volunteers. Many of them are acquaintances from the community. Certain situations arise which put you in contact with individual CASA volunteers including the following:

1. At a small dinner party, one of the guests (a friend) wants to talk about her court case with you.
2. Your answering machine at work has a message from a CASA volunteer stating that one of the parents of a child the volunteer is representing has violated a court order. Should you return the telephone call?

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<sup>118</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 1 (2007).

<sup>119</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2007).

<sup>120</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 3 (2007).

3. You pick up your phone and it is a CASA volunteer saying that he has to talk to you about an emergency situation. Should you talk with her about the situation?
4. You receive a personal letter from a CASA volunteer regarding the child he represents. What should you do with it?

What are the ethical issues presented in these situations and what should you do about each?

## Discussion

These scenarios take us back to the sections on ex parte communications and Canon 2<sup>121</sup> and Rule 2.9.<sup>122</sup> CASA volunteers are usually not trained in the law although they may have gained some information from their training to become a court-appointed volunteer. You must make certain that their training includes restrictions about communications with the judge regarding their volunteer work. The trainers must inform them that they cannot talk to you about their case outside of the court as that would be an ex parte communication and would require you to disclose the communication to all parties and possibly force you to disqualify yourself from the case. This is an important message to give to the volunteers at the swearing-in ceremony. Thus in scenario (1), you would simply say that you cannot talk about the case privately.

In scenario (2) you would refer this matter to the social worker, letting all parties know of the communication. In scenario (3) you should not talk with the CASA volunteer, but tell him or her to call the social worker, the social worker supervisor, the attorney for the child, or, if appropriate, call 911. In scenario (4) you should treat the letter as you treat all letters from parties, family members, and other interested persons. You should return it with a note that you cannot read the letter unless all parties have received a copy.

In all of these situations you should consider talking with the CASA executive director. That director should know that a volunteer has attempted to make contact with you about a pending case. The executive director has a responsibility to supervise the volunteers. A volunteer who violates program rules or protocols can endanger the entire program. Your message should mean that the volunteer will be

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<sup>121</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2007).

<sup>122</sup> MODEL CODE OF JUDICIAL CONDUCT R. 2.9 (2007).

reminded of the restrictions involving contacting the judge directly. If several similar problems arise, the executive director may terminate the volunteer, but that will be his or her decision, not yours.

**Sources:** Canon 2<sup>123</sup>, Rule 2.9<sup>124</sup>

## Conclusion

The relationship between the judge and the CASA program raises a number of ethical issues that are unique to the judiciary. These hypothetical situations address many of those issues and hopefully give some guidance to judges. You should refer to your state's code of judicial conduct and any appellate decisions and ethical guidelines to understand how your state has approached these issues.

The full text of the ABA Model Code of Judicial Conduct Code can be found on the American Bar Association webpage at [http://www.americanbar.org/groups/professional\\_responsibility/resources/judicial\\_ethics\\_regulation/mcjc.html](http://www.americanbar.org/groups/professional_responsibility/resources/judicial_ethics_regulation/mcjc.html).

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<sup>123</sup> MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2007).

<sup>124</sup> MODEL CODE OF JUDICIAL CONDUCT R. 2.9 (2007).