



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2009-03

March 31, 2009

QUESTION:

May a judge utilize an internet listserv through which the judge could pose questions, discuss issues of general interest and seek/provide advice?

COMMISSION CONCLUSION:

The Judicial Standards Commission determined that while a judge may make use of various internet applications, such as a listserv, for a variety of purposes, it would be inappropriate for a judge to utilize a listserv for the specific purpose of obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge.

DISCUSSION:

Canon 3A(4) of the North Carolina Code of Judicial Conduct provides “[a] judge should accord to every person who is legally interested in a proceeding, or the person’s lawyer, full right to be heard according to law, and, except as authorized by law, neither knowingly initiate nor knowingly consider ex parte or other communications concerning a pending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge.” The language clearly conveys the understanding that judges may occasionally need assistance in understanding legal issues in matters before them. Such assistance is permissible so long as it is provided by a “disinterested expert on the law”.

The language of Canon 1 or the Code directs judges to “uphold the integrity and independence of the judiciary” by establishing, maintaining, enforcing and personally “observing appropriate standards of conduct”. A judge’s decision should be reached independent of influences outside of the facts of a particular case and applicable law.

The process of posting an issue on a listserv, thereby inviting open comment by all who may have access to the post provides opportunities for these principals to be abused. Every person who responds to a listserv posting may not be considered an expert on the law in question. Concerns arise over the actual or perceived lose of independence to group thought. Issues of the security and confidentiality of such inquiries arise due to the inability to immediately and positively identify those who post responses.

References:

North Carolina Code of Judicial Conduct
Canon 1
Canon 3A(4)