

# Nebraska Ethics Advisory Opinion 00-3

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

May a presiding judge of the Nebraska Workers' Compensation Court ethically perform his statutorily prescribed duties charging him with conservation of assets of the Workers' Compensation Trust Fund?

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## **Conclusion**

The judge is not prohibited by the Nebraska Code of Judicial Conduct from performing his statutory duties.

## **Applicable Code Sections**

Nebraska Code of Jud. Cond., Canon 4E (1) and (2) (rev. 1996)

## **References in Addition to Nebraska Code of Judicial Conduct**

Neb. Rev. Stat. § 48-155 (Reissue 1998, as supplemented)

Neb. Rev. Stat. § 48-128 (Reissue 1998, as supplemented)

Neb. Rev. Stat. § 48-162.02 (Reissue 1998, as supplemented)

## **Discussion**

The presiding judge in the Nebraska Workers' Compensation Court is statutorily charged with performing supervisory duties as the needs of the compensation court may require. Neb. Rev. Stat. § 48-155 (Reissue 1998, as supplemented). As a part of such duties, he is charged pursuant to Neb. Rev. Stat. §§ 48-128 and 48-162.02 (Reissue 1998, as supplemented) with conservation of the assets of the Second Injury Fund and the Vocational Rehabilitation Fund. By statute, the State Treasurer is the custodian of such funds which are held in trust. Further, the statutes provide that the presiding judge of the court notify all workers' compensation insurance carriers and self insureds, or risk pools to make contributions to each of such funds when funds fall below a specific statutorily prescribed minimum. § 48-128(3)(c); § 48-162.02(10). It should be noted that the Nebraska Legislature amended § 48-162.02, effective July 1, 2000, combining the statutory scheme relating to the Second Injury Fund and the Vocational Rehabilitation Fund to become the Workers' Compensation Trust Fund. The requirements placed on the presiding judge of the Workers' Compensation Court, however, remain the same.

The presiding judge does not hear cases if the Second Injury Fund is a party and, further, does not approve lump-sum settlements where the Second Injury Fund has made any contribution toward settlement of a claim. One of the judges of such court questions whether such statutorily prescribed duties violate Canon 4E (1) and (2) relating to fiduciary activities.

It is questionable to begin with whether or not the presiding judge in performing his statutorily prescribed duties is in fact acting as a fiduciary.

“Fiduciary” is defined in Black’s Law Dictionary 625 (6<sup>th</sup> ed. 1990) as follows:

The term is derived from the Roman Law, and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires.

The statutory scheme herein specifically provides that the State Treasurer is the custodian of the funds which are held in trust. Therefore, the presiding judge is clearly not the custodian or trustee of such funds.

It is clear that Canon 4 is applicable to “extra-judicial activities.” Inasmuch as the presiding judge of the court is charged with such duties in his capacity as presiding judge of the Nebraska Workers’ Compensation Court, his activities in this regard are “judicial activities” rather than “extra-judicial activities.”

It should also be noted that the preamble to the Nebraska Code of Judicial Conduct provides that the canons and sections are rules of reason and are to be applied consistent with constitutional requirements, statutes, other court rules, and decisional law and in the context of all relevant circumstances.

It is therefore the opinion of the Committee that the statutorily prescribed duties of the presiding judge of the Nebraska Workers’ Compensation Court does not violate the Nebraska Code of Judicial Conduct.

### **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 Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Ethics Advisory Committee.*

APPROVED AND ADOPTED  
BY THE COMMITTEE ON MAY 26, 2000

*Judge Darvid Quist  
Judge Stephen M. Swartz  
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Judge Wadie Thomas  
Judge Randall Rehmeier  
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