

Nebraska Ethics Advisory Opinion 96-9

Question Presented--

May a judge write an occasional column for a local newspaper that is published by law enforcement officers primarily for law enforcement officers?

Conclusion

The Ethics Advisory Committee finds that this activity would be viewed, by the average defendant or litigant, as compromising the judge's ability to be impartial. Consequently, the committee concludes that it is not permissible for a judge to author a column for a newspaper that is published by law enforcement officers primarily for law enforcement officers.

Statement of Facts

The inquiring judge states that he has been asked to write an occasional column for a local paper that is published primarily for law enforcement officers, by law enforcement officers. He says that the column would be of a general nature and would not address any ongoing case or pending matter. No compensation would be involved.

Applicable Code Sections and Other Authority

Neb. Code of Jud. Cond., Canons 2A, 2B, 3B(5), 4A(1) and (3), 4B, 4C(3)(a), and 4D(1)(a) and (b) (rev. 1996).

Ohio Advisory Opinions 89-21 and 87-8; Alabama Advisory Opinion 78-35.

Jeffrey M. Shaman et al., *Judicial Conduct and Ethics* §§ 9.02 and 9.10 (2d ed. 1995).

Discussion

Judges for many years have written, lectured, and generally spoken about the law. These types of activities are specifically covered by Canon 4B, which provides as follows: "Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, *subject to the requirements of this Code.*" (Emphasis supplied). In commenting on this particular section, one group of authors stated: "In all cases the authorization is conditioned upon the requirement that the activity not interfere with judicial duties or cast doubt upon the judge's impartiality." Jeffrey M. Shaman et al., *Judicial Conduct and Ethics* § 9.02 at 284 (2d ed. 1995).

Canon 2B provides in part:

A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

Canon 4 provides in part:

CANON 4

A Judge Shall So Conduct All Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

....

(3) interfere with the proper performance of judicial duties.

There is authority for the proposition that a judge may write for a local newspaper. See Ohio Advisory Opinion 89-21. Likewise, there is authority for other types of writings such as a forward to a book on the bicentennial of the U.S. Constitution. See Ohio Advisory Opinion 87-8.

The problem that the committee focuses on is that law enforcement officers obviously come before any judge on a regular basis.

In a ruling under an earlier code of conduct, the advisory commission for the State of Alabama precluded a judge from becoming a dues paying honorary member of the Fraternal Order of Police by saying:

Since policemen and other law enforcement officers frequently appear as witnesses in the courts of this state and thus are constantly directly involved with judicial proceedings, it is the opinion of this commission that becoming a dues paying member of the Fraternal Order of Police would "reflect adversely" upon the impartiality of a judge.

Alabama Advisory Opinion 78-35. See, also, Shaman et al., *supra*, § 9.10.

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 MARCH 25, 1997

*Judge Darvid Quist
Judge Michael McGill
Judge Stephen M. Swartz
Judge Toni G. Thorson
Judge Lindsey Miller-Lerman
Judge Cloyd Clark
Judge Donald Rowlands*