

Nebraska Judicial Ethics Opinion 04-1

Question Presented –

*May a judge attend a training conference concerning domestic violence issues?
May the judge's tuition and expenses for attending the conference be paid for by a local domestic violence project or through a grant from the Department of Justice?*

Conclusion

The Code does not prohibit a member of the judiciary from attending an educational conference on domestic violence where the curriculum of the conference is not primarily prosecutorial in nature. However, the Code does prohibit accepting funding from either the local domestic violence project or through a grant from the Department of Justice, as each is a partisan group whose interests will likely come before the judge in future cases.

The Code of Judicial Conduct would not seem to prohibit a judge's attendance at an educational training conference concerning domestic violence issues. However, the judge should not accept "tuition and expenses" being paid by a domestic violence project or the Department of Justice because acceptance of such payment could result in an appearance of partiality.

Statement of Facts

A member of the judiciary has requested an opinion concerning an invitation by a local domestic violence project to attend a domestic violence training conference. The member of the judiciary indicates in her request that "[t]here is no expense to me or the State as the tuition and expense is funded by a grant from the Dept. of Justice." Although it is not clear from the member's correspondence, it appears that the tuition and expenses may be being paid by the local domestic violence project with funds provided through a grant from the Department of Justice. The Department of Justice's website contains information about the federal Office on Violence Against Women, which indicates the following:

Under the violence against women grant programs administered by the Department of Justice, the Office has awarded more than \$1 billion in grant funds, making over 1,250 discretionary grants and over 350 STOP (Services, Training, Officers, Prosecutors) formula grants to the states and territories. These grant programs help state, tribal, and local governments and community-based agencies to train personnel, establish specialized domestic violence and sexual assault units, assist victims of violence, and hold perpetrators accountable. More than 6,500 STOP subgrants have supported community partnerships among police, prosecutors, victim advocates, and others to address violence against women.

Applicable Code Sections

The following Canons of the Code of Judicial Conduct apply to the presented situation:

Canon 2A provides, in part:

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 4A provides:

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;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Canon 4D provides, in part:

D. Financial Activities.

....

(5) A judge shall not accept . . . a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

....

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge . . .

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Judicial Ethics Opinions 97-6, 00-2, 01-1, 02-6 (Informal Opinion – Not Issued)

Discussion

The issue of educational forums concerning domestic violence and the role of the judiciary with respect to the issue of domestic violence is an issue that is becoming more and more problematic. Somewhat related issues have been presented to the Judicial Ethics Committee in the past several years.

In Nebraska Judicial Ethics Opinion 97-6, the Judicial Ethics Committee unequivocally indicated that a member of the judiciary should not accept an appointment to be a member of a domestic violence organization, in that case a Community Response Team which mobilized community

resources to reduce and prevent domestic violence by developing a coordinated approach to respond to crimes of domestic violence. In Opinion 97-6, the Committee concluded that a judge must avoid membership in even the most praiseworthy of nonjudicial organizations if they espouse or are dedicated to a particular legal philosophy or position, as such membership would call into question the judge's impartiality.

In Nebraska Judicial Ethics Opinion 00-2, the Judicial Ethics Committee reaffirmed the notion that a member of the judiciary should not accept membership in an organization which espouses a particular legal philosophy or position, in that case ATLA. The Committee indicated, however, that a member of the judiciary might be able to accept a position as a "Judicial Fellow" which entailed gifts "incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use."

In Nebraska Judicial Ethics Opinion 01-1, the Judicial Ethics Committee equivocally indicated that a member of the judiciary, with certain cautionary considerations in mind, could accept an invitation to provide a welcoming statement at an event being sponsored by Mothers Against Drunk Driving (MADD). In that opinion, the Committee held that the judge might be able to avoid the appearance of partiality in future cases if the judge's welcoming speech was limited to welcoming the attendees and he took pains to ensure that his participation did not suggest endorsement of MADD's policy objectives or training goals.

In Nebraska Judicial Ethics Opinion 02-6 (Informal Opinion - Not Issued), the Judicial Ethics Committee unequivocally indicated that a member of the judiciary should not accept funding from a county Coordinated Response Team to attend a prosecutor's seminar dedicated to education on Domestic Violence. In that case, the local domestic violence project, the county Coordinated Response Team, was using Department of Justice monies through the Violence Against Women Act to offer to pay the tuition and expenses of the judge. In Informal Opinion 02-6, the Committee expressed concern about both the judge's acceptance of funding to attend the conference as well as the Coordinated Response Team's request for the judge to attend a later meeting of the Coordinated Response Team and make a statement.

The initial question is whether it is proper for a member of the judiciary to attend a domestic violence training conference. A review of the curriculum, provided by the judge requesting this opinion, indicates that the training conference addresses such issues as collaboration among community organizations to provide services for victims of domestic violence, training and education for investigating officers concerning victims and self-defense in domestic violence situations, education concerning the harmful effects of domestic violence on children, education concerning victims with disabilities, education concerning same sex domestic violence, education concerning stalking crimes, and education concerning the history and effectiveness of the Violence Against Women Act. The curriculum also includes prosecutor-targeted topics such as "Overcoming the Consent Defense" and "Social Action Programs to Challenge the Legal Process for Sexual Assault Prosecution." According to the materials concerning the seminar, the "conference is specifically for Prosecutors, Judges, Law Enforcement, Probation, Medical Professionals, Forensic Nurses, Victim Advocates, and anyone else with a desire to stop violence."

Canon 4D(5)(a) provides that a judge may accept an invitation "to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice." The Commentary to Canon 4D(5)(a) indicates that the section governs acceptance of an invitation to a

law-related function. Although the conference certainly has some topics targeted primarily at prosecutors, the balance of the curriculum suggests that the conference is not necessarily prosecutorial in nature but, arguably, is devoted to the improvement of the law, the legal system, or the administration of justice. As such, acceptance of an invitation to attend the conference would seem permissible and would not necessarily seem to call into question the judge's impartiality.

The more problematic question, however, is the second question of whether it is proper for the judge to have tuition and expenses paid through a grant funded by the Department of Justice. As indicated in Informal Opinion 02-6, acceptance of such funding would call into question the judge's impartiality. Because the funding is being done through the local domestic violence project and the Department of Justice, acceptance of the funding is tantamount to accepting a financial gift from a prosecutorial and/or domestic violence organization. The Committee noted in Informal Opinion 02-6 that victim assistance programs operate functionally in aid of the prosecution and are advocates who are partisan, not neutral, in the criminal justice process. See Lubet, S., When Good People Do Good Things: The Ethical Dimension of Judicial Involvement in Victim Assistance Programs, 69 *Judicature* 199 (1986). As such, a judge's involvement in victim witness programs cannot but compromise the appearance of the judge's impartiality. This is equally true with the acceptance of a financial gift from such an organization in the form of tuition and expenses to attend an educational conference.

The Commentary to Canon 4D(5)(h) indicates that the Canon prohibits judges from accepting gifts from lawyers or groups of lawyers if they have come or are likely to come before the judge or if their interests are likely to come before the judge. The Department of Justice is primarily a prosecutorial organization, headed by the Attorney General, and its interest is primarily prosecutorial in nature. Like the domestic violence groups, the interests of the Department of Justice in domestic violence matters amounts to a partisan interest that is likely to come before the judge in every domestic violence case, even if the Department of Justice itself is not directly involved in the case. As such, the Canon would seem to prohibit a judge from accepting a financial gift of tuition and expenses in association with a domestic violence conference.

Although the opinion was an informal opinion and was not released, Opinion 02-6 seems to be almost precisely on point. The specific conclusion of the Judicial Ethics Committee in that opinion was that "[f]unding should not be accepted from the county Coordinated Response Team to attend a prosecutor's seminar on domestic abuse." Although the conference in the present case is arguably not a "prosecutor's seminar," the same result seems mandated by the Code. It would seem improper for the judge to accept funding from the local domestic violence project or the Department of Justice because acceptance of such funding would call into question the judge's impartiality.

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 Judicial Ethics Committee.

APPROVED AND ADOPTED
BY THE COMMITTEE ON JANUARY 27, 2004

Judge Randall L. Rehmeier
Judge John F. Irwin
Judge Douglas F. Johnson
Judge Stephen R. Illingworth
Judge John F. Steinheider
Judge William B. Cassel
Judge Carlton E. Clark