

# Nebraska Judicial Ethics Committee Opinion 07-1

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

*May a judge introduce the keynote speaker at an event which is primarily commemorative but at which a fee is charged to attendees to cover the cost of the meal and excess funds are used for a scholarship fund for the benefit of a particular group?*

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## **Conclusion**

Because the breakfast is also a fundraising event, the participation proposed by the judge would be inappropriate.

## **Statement of Facts**

The judge has been asked to introduce the keynote speaker at an annual breakfast commemorating a historic legal opinion defining the legal status of a particular group, which opinion was issued by a Nebraska federal court. The judge would be identified on the program by his proper name and judicial title and seated with other presenters. A \$20 fee per person is charged to the approximately 500 attendees to cover the cost of breakfast, and excess funds are used for a scholarship fund for the benefit of that group. The “open invitation” brochure provides a form on which to request and pay to sponsor a table or to purchase tickets to the event. It further provides: “REGRETS. Unfortunately I/we cannot attend this year’s breakfast, however, I/we wish to contribute to the [group name] Scholarship Fund this breakfast supports. Enclosed please find check # \_\_\_\_\_ with my/our contribution of \$\_\_\_\_\_. “

## **Applicable Code Sections**

Neb. Code of Jud. Cond., Canons 2A, 4A, 4B, and 4C(3)(b)

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

Nebraska Judicial Ethics Opinion 90-1

Nebraska Judicial Ethics Opinion 00-1

Nebraska Judicial Ethics Opinion 03-5

Arkansas Advisory Opinion #94-03

Illinois Advisory Opinions #96-3, #01-04

Washington Advisory Opinion #95-21

Jeffrey M. Shaman et al., *Judicial Conduct and Ethics* (3d ed. 2000)

Annotated Guidelines for Extrajudicial Activities, Supreme Court of New Jersey (May 2004)

## **Discussion**

Canon 2 cautions against the appearance of impropriety in all of the judge’s activities, and Canon 4 sets forth the judge’s obligation to conduct all extrajudicial activities in a manner that minimizes the risk of conflict with judicial obligations. It is clear that a judge may speak at a breakfast. A judge may introduce a guest speaker. A judge may attend events to which tickets are sold. A judge may speak to a group where the group meets at a restaurant and is charged for the cost of the meal. Were the event nothing more than a breakfast to commemorate a historic legal precedent, it appears that the judge would be able to participate in accordance with Canon 4B.

The judge's request, however, reveals that excess funds from the cost of the breakfast will be used to fund scholarships for a particular group. Canon 4C(3)(b) contains limitations on a judge's participation in civic and charitable activities. First, a judge "shall not participate personally in . . . other fundraising activities." Canon 4C(3)(b)(i). Second, a judge "shall not use or permit the use of the prestige of judicial office for fundraising or membership solicitation." Canon 4C(3)(b)(iv).

Two related concepts underlie the proscription. First, the persons invited to attend may feel obligated to respond favorably to the invitation because of the judge's authority and control in the judicial arena, particularly where that person is or expects to be involved in a proceeding before that judge or his or her court. Where the ticket price includes a contribution, "there is a coercive pressure to contribute: it is evident who contributed by who attends." Illinois Advisory Opinion #01-04. Second, publicized association between the judge and the charitable organization may appear to lend the prestige of judicial office to the organization's fundraising activities.

The controlling issue is whether the event is intended, at least in part, to raise funds. "Fundraising activities include all charitable and other events from which an organization derives direct financial benefits, through the sale of tickets or otherwise, even if the financial benefit is incidental to the main purpose of the event, or the funds raised are to be donated to another organization, charity or cause." Annotated Guidelines for Extrajudicial Activities, § V.C. In the situation before us, it is clear that fundraising is one of the purposes of the event. The commentary to Canon 4C(3)(b) provides: "A judge must not be a speaker or guest of honor at an organization's fundraising event, but mere attendance at such an event is permissible if otherwise consistent with this Code." Because this event is used to raise funds for a scholarship, the judge's introducing of the keynote speaker would contravene the prohibition against the judge being "a speaker" or "the guest of honor" at a fundraising event. See Illinois Advisory Opinion #96-3. Accordingly, it would not be permissible for the judge to speak at the breakfast because the event is also a fundraiser.

## **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 MARCH 14, 2007

*Judge Stephen R. Illingworth  
Judge John F. Steinheider  
Judge Carlton E. Clark  
Judge John A. Colborn  
Judge Robert B. Ensz  
Judge Lawrence D. Gendler – dissent attached  
Judge William B. Cassel*

Judge Lawrence D. Gendler dissents as follows:

***Question Presented***

May a judge introduce the keynote speaker at a commemorative event where a breakfast fee is assessed to cover the costs of celebration, excess revenues are applied to scholarships, and the brochure for the event solicits contributions to scholarships from those unable to attend?

***Conclusion***

Because the judge's name is not being used to solicit funds and because the event is primarily commemorative in nature, his appearance is permissible.

***Statement of Facts***

A judge has been asked to introduce the keynote speaker at an annual breakfast commemorating a historic 1879 legal opinion issued by a federal court in Nebraska recognizing Native Americans as "persons" under the law. The judge is seated with other presenters; however, the judge's sole function is to introduce the keynote speaker. A fee is charged to all attendees to cover expenses related to the event with excess funds being distributed to a scholarship fund for the benefit of eligible students who are part of the celebration. A brochure has been distributed for the event indicating that those unable to attend may donate to support the scholarships; however, the judge's name does not appear on the brochure or invitation advertising the event. The judge's name will likely appear on a program distributed at the event.

***Applicable Code Sections:***

Neb. Code of Jud. Cond., Canons 2A, 4A, 4B, 4C

***References in Addition to the Nebraska Code of Judicial Conduct:***

Nebraska Judicial Ethics Opinion 96-1

Nebraska Judicial Ethics Opinion 97-3

Nebraska Judicial Ethics Opinion 00-1

Arizona Judicial Ethics Opinion 04-04

***Discussion***

Cannon 4B allows judges so speak and participate in extrajudicial activities and several prior Nebraska ethic's opinions have provided such. We have previously opined that a judge may serve as a volunteer chairperson for a celebration of a local charitable organization so long as certain requirements are met. Nebraska Judicial Ethics Opinion 96-1. We have also allowed for continued service on the board of a private foundation so long as the judge is not providing legal advice or participating in impermissible fundraising. Nebraska Judicial Ethics Opinion 97-3. And, we have concluded that a judge may not participate in a fundraising event for a local nonprofit if the judge's name and title are being circulated on literature advertising the event. Nebraska Judicial Ethics Opinion 00-1.

The primary purpose of this event is commemorative in nature and to celebrate an important part of Nebraska history. The brochure advertising the event does not list the judge as a participant or attendee. The judge's sole purpose of attending is to introduce the keynote

speaker and participate in the commemoration of this historic event.

In Arizona Judicial Ethics Opinion 04-04, the Arizona ethics committee was asked whether a judge could be inducted into his school district's hall of fame during a fundraising dinner for scholarships. And, if so, could the judge be recognized for his achievements. The committee approached the issue with a two-pronged test. The first test was whether the judge's participation amounted to a solicitation for scholarship funds. The second test was whether the judge is a speaker or guest of honor and, if so, in what context. The committee concluded that the judge was a guest of honor and determined that "the attention afforded to him that evening will be shared among other individuals. This makes it clear that he is being honored for his achievements rather than using his position to raise funds." The committee approved the judge's participation in the event.

Applying the Arizona test to our issue, the judge is not participating for the purpose of soliciting funds and his name does not appear on the brochure advertising the event. However, he is introducing the keynote speaker and is by definition a guest of honor. Therefore, we must determine if the context of his appearance is to advance the private interests of others.

In the request at hand, the judge noted that his participation would provide a good opportunity to further the goals of the State's Minority and Justice Implementation Committee. That committee's stated purpose includes seeking "funding for the implementation of task force recommendations...(and) to develop and coordinate community outreach initiatives." A judge should be able to participate in a commemorative event, even if solicitations are made, as long as the prestige of the office is not compromised and the perception is not one of advancing the private interests of others. Under these circumstances, I would find it proper for a judge to participate and introduce the keynote speaker.