

ADVISORY OPINION NO. 89-2

THE NEBRASKA JUDICIARY ETHICS ADVISORY COMMITTEE

**Question:** A judge of the Nebraska Judiciary has posed the following question: Is it proper for a judge who has recused himself in a criminal proceedings against a lawyer who practiced in his court to write a letter on the behalf of the lawyer to be included in the presentence investigation being prepared in connection with those criminal proceedings.

**Canons:** Canon 1 provides:

A judge should uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2 provides:

A judge should avoid impropriety and the appearance of impropriety in all his activities.

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

B. A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

The annotations to these canons contain the following:

Where a judge requests another judge to give favorable treatment to a litigant, such conduct violates Canons 1 and 2(A). Dixon v. State Commission on Judicial Conduct, 393 NE 2d 441 (N.Y. 1979).

Should a judge appear as a character witness? One view is that the prestige of the office should not be used as a witness. The other view is that if a judge's friend is on trial and the judge's testimony is essential to a just result, why shouldn't he testify? Canon 2 reaches a compromise in stating that: "He should not testify voluntarily as a character witness."

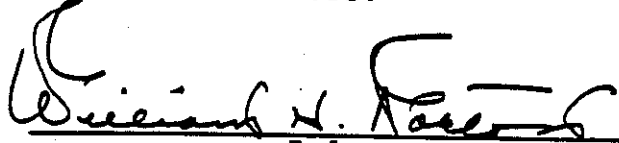
This ethical principle has been upheld by the Courts. Woodruff v. Tomlin, 593 F. 2d 33 (6th Cir. 1979), Unites States v. Callahan, 588 F. 2d 1078 (5th Cir. 1979).

Should a judge write letters of recommendation for friends or employees? The Supreme Court of New Jersey publicly reprimanded a municipal court judge who wrote a strong letter of recommendation and support for a friend who had been denied a license by the New Jersey Racing Commission. The Court held this action violated Canon 1 requiring a judge to uphold the integrity and independence of the judiciary. Further, the Court held that the action violated the spirit if not the letter of Canon 2(B) prohibiting a judge from " - - - testifying as a character witness." In re: Anastasi, 388 A. 2d 620 (N.J. 1979).

Opinion: Based on the foregoing, it appears that a judge who has recused himself in a criminal proceedings against a lawyer who practiced in his court and who thereafter writes a letter on the behalf of the lawyer to be included in the presentence investigation being prepared in connection with those criminal proceedings would violate both Canons 1 and 2(A and B) in the following particulars:

1. By an implied request for favorable treatment of the attorney from another judge; and,
2. By voluntarily testifying as a character witness.

For the Committee:

  
\_\_\_\_\_  
Judge

By the undersigned, for the purpose of being  
of the attorney from another party and

by voluntarily appearing as a character  
witness.

for the Commission



DATE