

NEBRASKA JUDICIAL ETHICS ADVISORY COMMITTEE
Advisory Opinion No. 92-2

A member of the Nebraska judiciary asks for an opinion on the following:

1. Can the judge ethically prepare legal documents in connection with an adoption of a child by the judge's daughter and her husband?
2. Can the judge ethically file the documents in the county court as legal representative for his daughter and her husband?
3. Can the judge ethically appear at the adoption hearing as the legal representative for his daughter and her husband?

Canon 5F of the Code of Judicial Conduct, adopted by the Nebraska Supreme court, provides:

"A judge should not practice law."

Neb. Const. art. V, section 14 provides in relevant part: "No judge of the Supreme or district courts shall act as attorney or counselor at law in any manner whatsoever . . ."

Neb. Rev. Stat. §7-111 (Supp. 1991) provides in relevant part:

"No person shall be permitted to practice as an attorney in any of the courts of this state while holding the office of judge of the Supreme Court, Clerk of the Supreme Court, judge of the Court of Appeals, judge of the district court, judge of the Nebraska Workers' Compensation Court, or judge of the county court. . . . Any person who violates any of the provisions of this section shall be guilty of a Class V misdemeanor."

It is clear that what the judge would like to do clearly constitutes the practice of law in the county court.

It is equally as clear, that it would be in violation of the Code of Judicial Ethics and the statutes of the State of Nebraska.

The judge correctly points out that Canon 4G of the Model Code of Judicial Conduct, adopted by the House of Delegates of the American Bar Association on August 1990, is not as restrictive as the Nebraska Code.

It states:

"Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family."

This ABA Code has not been adopted by the Nebraska Supreme Court. Also, this provision is in conflict with Neb. Const. art V, section 14 and §7-111 of our statutes.

CONCLUSION

It is the opinion of the committee that it is not proper for the inquiring judge to represent his daughter and son-in-law in connection with the adoption proceedings in any of the ways mentioned in his questions to this committee.

Opinion Adopted by Committee
February 10, 1992


Chairman