

Nebraska Ethics Advisory Opinion 94-2

Question Presented--

Can a judge be used as a reference in the certification process of the National Board of Trial Advocacy?

Conclusion

It is the opinion of the committee that a judge may act as a reference in the process of an attorney's certification by a professional board requiring judicial input in its certification process. The evaluation should remain confidential and should not create the impression that the judge endorses a particular lawyer.

Statement of Facts

A member of the Nebraska Judiciary has inquired whether a judge may grant permission to an attorney to use his name as a reference in the process of certification by the National Board of Trial Advocacy. The attorney represents that the response will remain confidential.

Applicable Code Sections

Canon 2B

References in Addition to Nebraska Code of Judicial Conduct

Ethics Advisory Opinion No. 91-1

Discussion

Canon 2B of the Nebraska Code of Judicial Conduct provides:

CANON 2

A Judge Shall Avoid Impropriety
and the Appearance of Impropriety in all of
the Judge's Activities

....

B. 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. A judge shall not testify voluntarily as a character witness.

The participation of the judge in this instance is appropriate and in keeping with the commentary to Canon 2B:

Although a judge should be sensitive to possible abuse of the prestige of the office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. . .

The confidentiality of the response in this instance is assured, and therefore, the ethical prohibition against lending the prestige of office to advance the interest of a particular attorney is not a concern.

Rather, as in the Ethics Advisory Opinion 91-1 dealing with a judge's response to a request from Martindale-Hubbell, participation in the process by the judge could arguably promote and improve the legal system.

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 15, 1994.