

# Nebraska Ethics Advisory Opinion 00-2

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## *Question Presented--*

May judges accept an invitation to be recognized as a "Judicial Fellow" by ATLA?

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## **Conclusion**

The Code does not prohibit a judge from receiving complimentary publications, registrations, or other resources that are to be used for official purposes. The Code, does, however, prohibit a judge from maintaining membership in an organization whose goals and purposes could raise a question as to the judge's impartiality. The specific benefits outlined in the invitation to become a "Judicial Fellow" in ATLA are not prohibited by the Code. However, the judge should be cautious to determine whether acceptance of the fellowship involves anything which would make the fellowship tantamount to a prohibited membership.

## **Statement of Facts**

A member of the judiciary has requested an opinion concerning an invitation from the Association of Trial Lawyers of America (ATLA) to become a "Judicial Fellow." The invitation from ATLA invites the judge to "be recognized as a judicial fellow by [ATLA]" and provides that such recognition would allow the judge to enjoy a complimentary subscription to TRIAL magazine, complimentary guest registration to ATLA conventions, and public information on the civil justice system to use in [his or her] community. Additionally, the invitation contains the following statement:

If you have concerns about this offer because several state supreme courts have ruled it unethical for judges to join organizations that represent a single side in legal disputes, ATLA recognizes members of the judiciary as Judicial Fellows, not members.

## **Applicable Code Sections**

The following Canons of the Code of Judicial Conduct apply to the above-described 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  
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.

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

Arkansas Advisory Opinions 99-04, 99-06, and 99-07; Arizona Advisory Opinions 96-4 and 95-2; Florida Advisory Opinion 95-21

### **Discussion**

It appears that every other jurisdiction that has addressed the question of whether a judge may properly become a "member" of an organization such as ATLA has concluded that such membership is prohibited by the Code. See, e.g., Arkansas Advisory Opinions 99-04, 99-06, and 99-07; Arizona Advisory Opinions 96-4 and 95-2; Florida Advisory Opinion 95-21. The principal rationale behind such an opinion is that a judge's membership in such an organization may give the appearance of favoritism and raise a question as to the judge's ability to preside fairly over certain cases. Arizona Advisory Opinion 96-4. One of the central themes of the Code is that judges must perform their duties independently and impartially and cannot participate in any activity that might suggest the appearance of favoritism or call into question the integrity of the judiciary. *Id.* See Canons 1A, 2A, 2B, 4A(1), and 4C(4).

According to ATLA's official web site, <http://www.atlanet.org>, ATLA "promotes justice and fairness for injured persons, safeguards victims' rights--particularly the right to trial by jury--and strengthens the civil justice system through education and disclosure of information critical to public health and safety." It is apparent that a judge's membership, whether complimentary or not, in ATLA, given ATLA's goals, would be inconsistent with the above-cited canons. This is not to say that ATLA or similar organizations have improper goals or purposes; it is simply to say that a judge's *membership* in such an organization may raise a question as to the judge's impartiality. ATLA appears to have recognized as much, given the specific distinction between "membership" and "fellowship" made in the invitation in the present case. This is in contrast to membership in such organizations as the American Bar Association and other bar associations, which are encouraged by the Code and commentary. See Canon 4 and commentary thereto.

The duty of judges to act in a professional manner in avoiding even the appearance of being potentially subject to outside influence is great. The linchpin of our judicial system is the principle that judges are and remain neutral and disinterested in all matters. A corollary to this principle is that judges be detached from all parties who may have an interest in matters sub judice. Arizona Advisory Opinion 95-2. As such, membership in organizations who promote and support matters which could reasonably call a judge's impartiality into question is prohibited.

In the present case, the specific question presented is slightly different than whether a judge could properly accept membership in ATLA. Instead of "membership," ATLA has offered to recognize the judge as a "Judicial Fellow." Whether acceptance of such is appropriate depends, in part, on information not presently available to us. According to the invitation letter, the benefits of becoming a "Judicial Fellow" in ATLA are free publications, free registration to legal conventions, and free public education information. None of these specific benefits is prohibited by the Code. See Arkansas Advisory Opinions 99-06 and 99-07; Illinois Advisory Opinion 95-7. Canon 4D(5)(a) provides that a judge may accept a gift "incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use." The specific

benefits of "Judicial Fellowship" outlined in the invitation letter would fall within this provision, and acceptance of such would not be prohibited.

The real question, then, is whether anything else is to occur incident to being "recognized as a Judicial Fellow." If such recognition is limited solely to the benefits specifically outlined in the invitation, acceptance of the invitation would not be prohibited. If, however, such recognition entails anything else which amounts more to complimentary membership in the organization or could in some way imply endorsement of the organization and the organization's goals and purposes, then acceptance of the invitation would be prohibited. A review of the "Membership Categories" listed on ATLA's official web site does not include any mention of "Judicial Fellows." As such, depending on whether becoming a judicial fellow entails anything beyond receiving complimentary publications and registrations, acceptance of the invitation may or may not be inappropriate. If the invitation can be taken at face value, and the status of judicial fellow does not entail anything tantamount to a complimentary membership, it would appear that acceptance of the invitation is acceptable.

### **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 21, 2000

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