

# Nebraska Judicial Ethics Opinion 06-7

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## **Questions Presented--**

(1) *Can a current judge, who wants to seek a different judicial position, actively seek out support for the new judicial position from attorneys that practice before the judge?*

(2) *Can a current judge, who wants to seek a different judicial position, actively seek out support for the new judicial position from nonattorneys that are acquaintances or friends of the judge?*

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## **Conclusion**

A current judge seeking a different judicial position may actively seek out support from attorneys that practice before the judge. He or she also may seek out support from nonattorneys who are acquaintances or friends provided he or she refrains from advocating a philosophy or personal belief on controversial issues while seeking this support.

## **Statement of the Facts**

A county court judge writes for a judicial ethics opinion on the questions presented.

## **Applicable Code Sections**

Neb. Code of Jud. Cond., Canon 2, 3B(5), and 5B(2)(a)

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

Nebraska Judicial Ethics Opinion 94-1

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

Neb. Rev. Stat. § 24-810(1) (Reissue 1995)

## **Discussion**

The following Canon of the Code of Judicial Conduct applies to the presented situation:

### CANON 5

A Judge or Judicial Candidate Shall  
Refrain from Inappropriate Political Activity

....

B. Candidates Seeking Appointment to Judicial or Other Governmental Office:

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(2) A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) Such persons may:

- (i) except as prohibited by law, communicate with the appointment authority, including a nominating commission;
- (ii) seek support or endorsement of the appointment from organizations that regularly make recommendations for appointment to the office, and from individuals to the extent requested or required by those specified in section 5B(2)(a), and to the extent not prohibited by law;
- (iii) provide to those specified in sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to the candidate's qualifications for the office;

....

It is the Committee's opinion that Nebraska Judicial Ethics Opinion 94-1 has answered these questions. Some clarification may be necessary as to nonattorneys. Nebraska Judicial Ethics Opinion 94-1 concluded that "[c]andidates for appointment to judicial office are permitted to seek support or endorsements from individuals other than, and in addition to, the individuals the nominating commission requests candidates to name in their application papers. Section 5B(2)(a)(ii) directly answers the question asked and specifically permits the activity described in the question asked." The commentary to section 5B of the Code also makes it clear that candidates seeking appointment to another judicial office or other governmental office may apply for appointment and seek "appropriate" support. Obviously, the attorneys who practice before the judge are best qualified to evaluate the judge and can provide appropriate support. Section 24-810 (1) regarding judicial vacancies also invites the public to express views concerning candidates for judicial office.

The caveat the Committee has is when the judge seeks support from nonattorneys that are acquaintances or friends of the judge. "CANON 5 of the 1990 Model Code of Judicial Conduct attempts to reconcile the perceived need for an elected judiciary with the general desire for a judiciary of unquestionable integrity, independence and impartiality." See Jeffrey M. Shaman et al., *Judicial Conduct and Ethics* 11.01 (3d ed. 2000). The same concerns apply to candidates for judicial positions under the merit system as apply to a judge facing public election between competing candidates.

In situations where a judge seeks support from an attorney, it should be crystal clear to both parties that the model Code of Professional Responsibility governing lawyers and the Nebraska Code of Judicial Conduct prohibit the judge from making promises as to taking a particular approach in deciding cases, as to advocating a particular philosophy or expressing personal belief on controversial issues. This would be an ethical violation under Canon 2 and Canon 3B(5) for the judge to do so.

The clarity of the prohibition of a sitting judge promising a particular position or philosophy may be lost on a friend or acquaintance. The judge, in seeking support from nonattorneys that are acquaintances or friends of the judge, should be careful when seeking such support to refrain from taking a position or advocating a certain philosophy. The judge may talk about his or her qualifications but not the divisive issues of philosophy and interpretation. To do otherwise would violate Canon 2 requiring a judge to avoid impropriety and the appearance of impropriety in all of the judge's activities. It would likewise violate Canon 3B(5) requiring a judge to perform judicial duties without bias or prejudice.

**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 NOVEMBER 22, 2006

*Judge John F. Irwin  
Judge Stephen R. Illingworth  
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Judge Carlton E. Clark  
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