

Nebraska Judicial Ethics Committee

Advisory Opinion 92-8

Questions Presented

- (1) Does the Nebraska Code of Judicial Conduct (1992) apply to child support referees?
- (2) If so, to what extent does the Code apply to part-time child support referees?
- (3) If so, to what extent does the Code apply to full-time child support referees?

Discussion

Question 1

The Application Section of the Nebraska Code of Judicial Conduct (1992) states as relevant to this inquiry: "All . . . child support referees . . . shall comply with this Code except as provided below."

The inquirer correctly notes the Nebraska Supreme Court has said that child support referees are not judges. That is one of the reasons the Code specifically names child support referees as persons who shall comply with the Code. The statement in the Commentary to Canon 3 to the effect that referees are appointees of a judge does not modify the Application Section as one inquirer suggests. Unlike many other appointees of a judge, child support referees are judicial officers.

Thus, the Code applies to child support referees.

Question 2

Part A of the Application Section creates an ambiguity on the extent of Code application to part-time child support referees. Construction of the Code as adopted is the task at hand.

All child support referees shall comply with the entire Code unless excepted by a specific provision. The only specific provision relating to part-time child support referees is part A(3) of the Application Section. The only function of part A(3) is to modify the general prohibition on the practice of law. It does not alter the general language of the Application Section.

Parts A(1) & A(2) specify the sections of the Code which do not apply to part-time judges and modify the no law practice rule as it relates to part-time judges. Parts A(1) & A(2) deal only

with part-time judges. Acting judges of the Workers' Compensation Court are part-time judges as defined in the Terminology Section of the Code. Child support referees are not includable within the definition of part-time judges.

Referees appointed under Neb. Rev. Stat. §§25-1189 et seq. (1989) or for disciplinary proceedings are dealt with in part A(4). Part A(4) excepts these judicial officers from the application of specific sections of the Code and modifies the no law practice rule as it relates to those type of referees. Child support referees are not part A(4) referees.

Part B of the Application Section deals only with retired judges. It contains nothing relevant to child support referees.

This Committee's function, in the present context, is to give advice to inquiring judicial officers based upon the provisions of the Code as adopted. This Committee has no authority to change the Code through advisory opinions. The only reasonable textual interpretation of the Code as adopted is that part-time child support referees are required to comply with the entire Code, except that their law practice limitation is substantially less than the no law practice rule applicable to judges.

Question 3

The Code, as adopted, does not make any exceptions from its provisions for full-time child support referees. Thus, it is clear the entire Code applies to full-time child support referees.

One Final Observation

After presenting arguments opposing application of Canons 4 & 5 to child support referees, one of the inquirers asked additionally whether it is necessary that the entire Code apply to child support referees or could a portion of the Code apply. We do not construe this question as requesting advice. Further, the inquirer did not ask us to consider recommending to the Nebraska Supreme Court an amendment of the Code. Therefore, we decline to answer this question.

Dated this 16 day of December, 1992.

For the Committee:


Darvid D. Quist, Chair