

Nebraska Ethics Advisory Opinion 98-3

Question Presented--

May a judge's staff engage in political activity with respect to local elections?

Conclusion

Members of a judge's staff are not barred from participation in political activities involving local elections so long as the activity is entirely separate from their employment as judicial staff and occurs outside the workplace and hours of their employment. However, caution should be exercised by the judge as suggested and set forth below.

Statement of Facts

A trial judge's staff, bailiff and court reporter, have indicated an interest in participating in political activity by becoming involved in local elections.

Applicable Code Sections

Nebraska Code of Jud. Cond., Canons 2, 3, and 5

Discussion

It is well established that Canon 5 of the Nebraska Code of Judicial Conduct severely restricts the political activity of judges.

By accepting their office, judges have surrendered their ability to participate in the political process except as voters and as otherwise permitted by Canon 5. However, the Code does not specifically preclude the judge's staff from participating in the political process. Nevertheless, to avoid the appearance of impropriety and to conform to the requirements of the Code, caution is necessary. Judges have a responsibility to perform the duties of the judicial office impartially and diligently as required in Canon 3 of the Code. Moreover, Canons 2 and 3 require a judge to avoid the appearance of impropriety. Those requirements extend to the judge's staff, including clerks, secretaries, and bailiffs. As stated in Canon 3C(2), "A judge shall require staff, court officials and others subject to the judge's discretion and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties." Canon 2 states that a judge shall avoid the "appearance of impropriety."

Therefore, judges must avoid impropriety and the appearance of impropriety in their own actions, and they must also exercise their authority to avoid the appearance of bias or prejudice by their staff that could reflect on the judge's impartiality. Consequently, judges should direct their staff to scrupulously avoid any political activity or manifestation of political activity during working hours. For example, staff should not be allowed to display any items referencing political parties or candidates in the workplace. Staff should also be required to refrain from identifying themselves by reference to their employment or position when they are engaged in political activity. The staff must avoid any conduct that would suggest bias or prejudice by the court or that would support an inference that the judge is condoning or approving the political party, candidate, or activity.

The court is also required to exhibit due diligence. The requirement of due diligence also applies to staff and is applicable in this matter. The supervising judge should require staff not to engage in any political activity during the hours of their employment not only to avoid the appearance of impropriety but also to comply with the due diligence requirement of the Code. The judge should, for example, during the hours of staff employment in their official functions, prohibit staff from making telephone calls related to political activity; preparing any materials related to political activity; and using resources, time, or materials of the court to further any political activity. Obviously, materials of the court should not be utilized at any time. See *In the Matter of Hull*, No. 171-96, Public Admonishment (W. Va. Judicial Investigation Commission, Sept. 3, 1996) (use of court copy machine to make copies of announcement of a Democrat picnic).

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 MAY 22, 1998

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