

Nebraska Ethics Advisory Opinion 98-4

Question Presented--

May a judge write a letter of support for a funding grant on behalf of an agency providing support and assistance for the victims of crimes? Is the answer different if the agency is a Court Appointed Special Advocate (CASA) agency?

Conclusion

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

Statement of Facts

A judge writes for an advisory opinion after recently being asked on several occasions to submit a letter of support to accompany grant applications for certain nonprofit agencies, such as the County Attorney's Victim Assistance Unit and the Center for Survivors of Sexual Assault and Domestic Violence.

Applicable Code Sections

Neb. Code of Jud. Cond., Canons 2B and 4

References in Addition to Nebraska Code of Judicial Conduct

Nebraska Ethics Advisory Opinions 89-2, 89-7, 90-2, 91-1, 91-2, 92-7, and 97-6

Discussion

Canon 2B of the Nebraska Code of Judicial Conduct provides in pertinent part: "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others . . . to convey the impression that they are in a special position to influence the judge. The judge shall not testify voluntarily as a character witness."

This committee has counseled within the past year that judges must avoid membership in or official involvement with victim witness, victim's assistance, or CASA programs. See Nebraska Ethics Advisory Opinion 97-6. That opinion, however, expressly allows a judge to endorse and promote the concept of victim advocacy programs so long as the judge avoids direct involvement with any particular organization.

The distinction which the committee has drawn is clearly recognized in the commentary to Canon 2B which warns that a judge may serve as reference or provide a letter of recommendation so long as the judge is sensitive to possible abuse of the prestige of office.

Judges do not violate the Code of Judicial Conduct by writing letters of recommendation for people they know who are applying to law school, for a judgeship, or for employment in general. See Nebraska Ethics Advisory Opinion 90-2. Likewise, judges may respond to a request from Martindale-Hubbell and rate attorneys so long as the evaluation is confidential and is not used to create the public impression that a judge endorses a particular lawyer. See Nebraska Ethics Advisory

Opinion 91-1. And finally, Nebraska Ethics Advisory Opinion 92-7 allows a judge to submit a letter of recommendation on behalf of a court clerk who has been nominated for "Outstanding County Official of the Year."

We are of the opinion that a judge may write a letter of support for a funding grant on behalf of a victim assistance or CASA agency based on the judge's personal knowledge. The committee does not view such a written recommendation as the direct participation in fundraising which would be a violation of Canon 4. The judge should, however, avoid memberships in or direct involvement with those organizations, and the judge should remain sensitive to the possibility that the prestige of judicial office may be abused by advocacy groups who are partisan, not neutral, in the criminal justice process.

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 AUGUST 19, 1998

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