

Nebraska Judicial Ethics Opinion 04-2

Question Presented –

Under what circumstances, if any, is it appropriate for a judge to retain a gift or honorarium for performing a wedding ceremony?

Conclusion

A judge may retain a gift or honorarium for the performance of a wedding ceremony with the limitations that (1) the judge not solicit his or her services in regard to performing the ceremony, (2) the ceremony be conducted outside of normal court hours¹ and without the use of publicly funded court resources, and (3) the compensation received by the judge be reasonable to the services rendered.

Applicable Code Sections

Neb. Code of Jud. Cond., Canons 4A(2) and (3), 4D(1)(a), and 4H(1)(a) and (b)

References in Addition to Nebraska Code of Judicial Conduct

Neb. Constitution art. V, § 20

Neb. Rev. Stat. § 42-108

Washington Advisory Opinion 90-05 (1990)

Arizona Advisory Opinion 88-06 (1998)

Texas Ethics Opinion No. 236 (1998)

New York Advisory Opinion 89-25 (1989)

Discussion

It is the opinion of the Committee that a judge may retain a gift or honorarium for performing a wedding ceremony so long as the judge has not solicited the services, the ceremony is conducted outside of normal court hours, no publicly funded court resources are used to perform the ceremony, and the compensation received is reasonable to the services that have been rendered.

Neb. Constitution art. V, § 20, provides in part that, “[a]ll officers, when not otherwise provided for in this Article, shall perform such duties and receive such compensation as may be prescribed by law.” Neb. Rev. Stat § 42-108 provides in part that “[e]very judge, retired judge, or clerk magistrate, and every preacher... may perform the marriage ceremony in this state.” Section 42-108 thus provides that judges “may,” rather than “shall,” perform wedding ceremonies. Therefore, judges have the discretionary authority to perform weddings, but are not required to do so as part of their constitutional or statutory duties as a judge. See, also, Washington Advisory Opinion 90-05 (1990); Arizona Advisory Opinion 88-06 (1998); Texas Ethics Opinion No. 236 (1998); New York Advisory Opinion 89-25 (1989). It is the opinion of the Committee that this power is governed by Canon 4 of the Nebraska Code Of Judicial Conduct. Canon 4 provides that a judge conduct extra-judicial activities in a way that minimizes the risk of conflict with judicial obligations.

Canon 4A(2) and (3) provide that a judge conduct all extra-judicial activities so as not to demean the office or interfere with the proper performance of judicial duties. The performance of wedding

¹ For purposes of this opinion, “normal court hours” include all hours when the court is open and in session, including noon/lunch hours.

ceremonies by judges during normal court hours with the use of courthouse facilities and staff is consistent with § 42-108, as well as Canon 4A(2) and (3), as long as no gift, honorarium, or payment is received, and as long as weddings do not interfere with the proper performance of judicial duties. It is the opinion of the Committee that no compensation may be retained for ceremonies conducted during normal court hours, since compensation during these hours has already been provided by law in the form of the judge's salary. Ceremonies where payment is retained must take place outside of normal court hours and without the use of publicly funded court resources and so as to not interfere with normal judicial activities. A judge receiving compensation for performing a wedding ceremony after hours must not use publicly funded court resources, including court personnel and security staff, to assist the judge with the ceremony. See, also, Washington Advisory Opinion 90-05 (1990); Arizona Advisory Opinion 88-06 (1998); New York Advisory Opinion 89-25 (1989).

Canon 4D(1)(a) mandates that a judge not exploit his or her judicial position by engaging in certain financial and business dealings. Canon 4H(1)(a) and (b) provide that a judge is allowed to receive compensation and reimbursement for extra-judicial activities that are permitted by the Code as long as the payments do not influence performance or create an appearance of impropriety. Judges are only one class of individuals empowered by § 42-108 to perform wedding ceremonies. It is the opinion of the Committee that judges should not be precluded from receiving reasonable Compensation, as well as reimbursement for expenses, for informal time taken outside of normal court hours to perform wedding ceremonies. A judge's retention of payment for performance of a wedding ceremony outside of normal court hours is allowed as long as the judge has not solicited his or her services and the payment for such services is reasonable. See, also, Arizona Advisory Opinion 88-06 (1998); Texas Ethics Opinion No. 236 (1998); New York Advisory Opinion 89-25 (1989).

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 SEPTEMBER 29, 2004

*Judge Randall L. Rehmeier
Judge John F. Irwin
Judge Douglas F. Johnson
Judge Stephen R. Illingworth
Judge John F. Steinheider
Judge Carlton E. Clark
Judge John A. Colborn*