

Nebraska Ethics Advisory Opinion 01-1

Question Presented--

May a judge accept an invitation to provide a welcoming statement at an event being sponsored by Mothers Against Drunk Driving (MADD) for law enforcement officers and representatives of victim witness organizations where the attendees will receive death notification training and leadership training?

Conclusion

The Code of Judicial Conduct does not seem to prohibit a judge from appearing and speaking before an advocacy group such as MADD in every circumstance. The Code does, however, prohibit a judge from engaging in behavior which amounts to an implicit endorsement of the goals or policies of an organization such that the judge's partiality may be reasonably questioned. Without more specific details about what the judge has been asked to speak about or what the judge plans to say during the welcoming address, as well as more details about the nature of the MADD event, it is difficult to give a definitive answer about the specific question presented here. However, the judge should consider the factors set forth below and be particularly cautious to ensure that the content of the speech or the circumstances of the meeting do not cast doubt on the judge's impartiality. With more details, a more definitive answer could be provided.

Applicable Code Sections

The following Canons of the Code of Judicial Conduct apply to the above described situation:

Canon 2A provides that "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 4 is entitled "A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations" and provides, in part:

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

References in Addition to Nebraska Code of Judicial Conduct

Washington Advisory Opinions #93-19, #95-8, #96-9

West Virginia Advisory Opinions, April 24, 1997, August 29, 1997 (Attendance)

Illinois Advisory Opinion #94-17

Discussion

According to Washington Advisory Opinion #93-19:

Concerns about maintaining a judge's impartiality can limit the type of audience appropriate for a judge's education efforts or other speaking engagements. Therefore, prior to agreeing to a speaking engagement, a judge should consider the nature of the organization and whether speaking to the group may tend to identify the judge with the aim or purpose of the organization. In assessing the nature of the organization and the speaking engagement, the relevant factors include:

- (1) whether the organization advocates positions on disputed issues;
- (2) whether the organization regularly engages in adversarial proceedings in court;
- (3) whether the organization files amicus briefs on disputed issues;
- (4) whether the organization endorses non-judicial political candidates;
- (5) whether the organization subscribes to a particular legal philosophy or position that implies commitment to causes that may come before the court for adjudication;
- (6) whether the organization is devoted to the improvement of the law, the legal system, or the administration of justice; and
- (7) whether the organization serves primarily a social function.

Other jurisdictions that have specifically addressed the issue of whether a judge may properly speak before a MADD group have answered the question both ways. In a pair of opinions, the State of Washington Ethics Advisory Committee has indicated that a judicial officer should not accept an invitation to speak at a MADD event. See Washington Advisory Opinions #95-8, #96-9. In one instance, the offer was for a judge to speak at an annual awards ceremony to recognize the patrol officer from each county who had issued the most driving under the influence (DUI) citations in the previous year and included MADD picking up the cost of the judge's meal. Washington Advisory Opinion #95-8. In the other instance, the offer was to be the keynote speaker at a MADD dinner on the topic of the role of MADD and the court system. Washington Advisory Opinion #96-9. In each instance, the Washington committee concluded that accepting the invitation under the specific circumstances of each case would cast doubt on the judge's capacity to decide impartially DUI issues which may come before the judge. Similarly, the West Virginia Judicial Investigation Commission has indicated that a judicial officer should not attend as a guest annual luncheons, picnics, or parties sponsored by victim assistance programs, sexual assault centers, family violence prevention programs, police agencies, or county crimestoppers organizations, among others, because the organizations at issue represent one interest in a particular area and appear in court on a fairly regular basis. See West Virginia Advisory Opinions, April 24, 1997, August 29, 1997 (Attendance).

In contrast, the Illinois Judges Association has indicated that merely addressing an organization is not an implicit endorsement of the organization or its agenda. See Illinois Advisory Opinion #94-17. That opinion indicated that where a judge was not to be an honoree of the organization before which the judge would be speaking, the judge was free to speak before groups, including groups such as MADD, which advocate new legislation or changes in the enforcement of existing laws, as long as the judge takes pains to ensure that the speech does not say anything that casts doubts on the judge's impartiality.

According to MADD's official web site, <http://www.madd.org>, the organization strongly supports various legislative endeavors related to alcohol issues. It is clear that under certain circumstances such as those present in the situations presented in the Washington opinions noted

above, a judicial officer's speaking at a particular MADD function could reflect adversely upon the judge's impartiality to adjudicate DUI cases and interfere with the performance of the judge's judicial duties. Those opinions, however, involved factual scenarios concerning "awarding" officers who issued the most DUI tickets or defining the role of MADD or another advocacy group in judicial proceedings. Those opinions, as such, involved situations which would suggest that the judge might favor or listen to MADD associates more than some other participant in a judicial proceeding. The better approach would seem to be that taken by the Illinois committee, which favors the balancing of the audience, the topic, and the particulars of the speech, as opposed to a carte blanche rule that appearing at a MADD event is necessarily improper.

In the present case, there is certainly grounds for being cautious. The fact that the invitation indicates the audience will be primarily law enforcement officers and victim witness organization members and that those attendees will be receiving some sort of leadership training suggest the possibility that the event could be more akin to the Washington situations above. However, without knowing what the judge is being asked or is planning on speaking about during the welcoming address, it is difficult to say that the judge's appearance would necessarily reflect adversely on impartiality. As such, if the judge's participation is limited to welcoming the attendees and the judge takes pains to ensure that the speech does not say anything to suggest endorsement of MADD's policy objectives or training goals, or otherwise cast doubt on the judge's impartiality, it may well be possible that the judge's participation would not carry the kind of implicit endorsement of the organization or its agenda that comes with being honored by the organization. See Illinois Advisory Opinion #94-17. The factors set forth above should be considered in light of the topic and content of the judge's proposed speech to reach a determination.

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 24, 2001

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