

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 2003-6

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[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

SYLLABUS: It is proper for a judge to referee soccer games for a non-profit soccer organization and receive compensation. A judge must report referee fees as income on the annual financial disclosure statement and as extra-judicial compensation on the quasi-judicial and extra-judicial report.

OPINION: This opinion considers whether the Ohio Code of Judicial Conduct permits a judge to referee a soccer game and receive compensation.

Is it proper for a judge to referee soccer games for a non-profit soccer organization and receive compensation?

A judge wishes to referee soccer games for a non-profit soccer organization within the state. The non-profit soccer association holds referee clinics. All potential referees must attend four classes. After successful completion of the classes, the referee's name goes to a referee assigner of the non-profit soccer organization. Teams are required to pay the referee's fees. Referee fees vary from \$14.00 per team to \$18.00 per team.

The ethical propriety of a judge being a referee of a sports event has not been the subject of an advisory opinion in Ohio. In Alabama, advice was offered that a District Judge may serve as a referee or umpire for sports activities (basketball, football, and softball games) with or without remuneration as long as the judge may do so without violating Canon 3 ("The judicial activities of a judge take precedence over his other activities.") and Canon 5(C) ("A judge should refrain from any financial or business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties or exploit his judicial position."). Alabama, Judicial Inquiry Commission, Op. 80-79 (1980). In New Mexico, whether a metropolitan judge could be a statistician at university football and/or basketball games depended on whether the requirements of the Code could be met; for example, whether the time devoted to the activity might conflict with judicial duties. New Mexico, Advisory Committee on the Code of Judicial Conduct, Op. 02-03 (2002).

Former Canon 5(A) of the Ohio Code of Judicial Conduct stated that "[a] judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties." Former

Canon 5(A) Commentary stated “[c]omplete separation of a judge from extra-judicial activities is neither possible nor wise; he [she] should not become isolated from the society in which he [she] lives.” These provisions vanished from the Ohio Code of Judicial Conduct upon amendments to Canon 4, effective May 1, 1997.

The current Ohio Code of Judicial Conduct does not specifically mention a judge’s participation in sporting events. However, the absence of a provision, addressing a judge’s involvement in extra-judicial avocational activities such as the arts, sports, and other social and recreational activities, is not a sign that such activities are improper.

Reading together several provisions of the current Code, extra-judicial activity is anticipated and compensation is permitted. Canon 2(B) permits a judge’s service in activities unrelated to the law: “A judge may serve as an officer, director, trustee, or non-legal advisor . . . of an educational, religious, charitable, fraternal, or civic organization not conducted for profit [subject to stated limitations and other requirements of the Code]. Canon 2(D) permits “compensation and reimbursement of expenses for the activities permitted by this Code, if the source of the compensation or reimbursement does not give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety.” Canon 2(D)(3)(b) requires a report of any quasi-judicial or extra-judicial activity for which the judge received compensation. Canon 3(A) cautions a judge that “[t]he judicial duties of a judge take precedence over all of the judge’s other activities.”

A judge’s participation as a soccer referee for a non-profit soccer association is not improper. A judge’s participation as a referee in the games of a non-profit soccer association is akin to the Canon 2(B) permitted activity of participation as an officer, director, trustee, or non-legal advisor in a civic organization not conducted for profit.

Being a referee of a soccer game for compensation does not involve the judge in improper financial or business activities. Under Canon 2(C)(1)(a) and (b) a judge may not engage in financial and business “dealings that reasonably may be perceived to exploit the judge’s judicial position” or “dealings that involve the judge in frequent transactions or continuing business relationship with lawyers or other persons likely to come before the court on which the judge serves.” It is unlikely that a judge’s involvement as a referee for the games of a non-profit soccer organization would exploit the judicial position or involve the judge in relationships with persons likely to come before the court. Under Canon 2(C)(3), a judge is not permitted to serve as an officer, director, manager, general partner, advisor, or employee of any business entity, except for two stated exceptions not applicable herein. The rule does not bar a judge from being a referee for a soccer game of a non-profit soccer organization. Compensation for an extra-judicial activity does not automatically make a judge an employee of a business. A judge who serves as a referee for a non-profit soccer organization is not an employee of a business entity.

A judge may receive fees for services as a soccer referee under Canon 2(D)(1) so long as the compensation does not exceed a reasonable amount or exceed what a person who is

not a judge would receive for the same activity. A judge must report all referee fees received. Pursuant to Canon 2(D)(3)(a), referee fees must be reported as income on the annual financial disclosure statement. Pursuant to Canon 2(D)(3)(b), referee fees must be reported on the quasi-judicial and extra-judicial activity report as an extra-judicial activity for which the judge receives compensation

In conclusion, this Board advises as follows. It is proper for a judge to referee soccer games for a non-profit soccer organization and receive compensation. A judge must report referee fees as income on the annual financial disclosure statement and as extra-judicial compensation on the quasi-judicial and extra-judicial report.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.