

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

65 SOUTH FRONT STREET, 5TH FLOOR, COLUMBUS, OH 43215-3431
(614) 387-9370 (888) 664-8345 FAX: (614) 387-9379

www.sconet.state.oh.us

OFFICE OF SECRETARY

OPINION 2006-3

Issued April 7, 2006

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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: A probate judge may teach a six hour course on the topic of adult protective services at a training program for employees of county departments of job and family services, provided the activity does not interfere with the performance of judicial duties, but the probate judge should not accept compensation. Compensation for such activity is prohibited under both the Ohio Code of Judicial Conduct and Ohio Ethics Law. Compensation to the probate judge from the state department of job and family services does not uphold the integrity, independence, and impartiality of the judiciary as required under Canons 1 and 2 of the Ohio Code of Judicial Conduct and would be an honorarium, improper compensation, and an unlawful interest in a public contract under Ohio Ethics Law. Prospective application of this opinion is recommended.

OPINION: This opinion addresses a question regarding probate juvenile judges providing training to employees of county department of job and family services for compensation.

Is it proper for a probate judge to serve as a “trainer” for the Ohio Department of Jobs and Family Services, teaching a six hour course on the topic of adult protective services at a training program for employees of county departments of job and family services, and to receive compensation?

Probate judges have been asked to help train employees of county departments of job and family services by teaching a six hour course on the topic of adult protective services. As proposed, the probate judges are asked to present the topic of “Basic Legal Framework for Adult Protective Services” covering six areas: legal structure; state statutes for protecting older adults; interpreting law; application of the law; unraveling key legal concepts; legal actions against elder abuse perpetrators.

As part of the process, a probate judge would enter an agreement with a county department of job and family services. The purpose of the agreement is to provide inservice training workshops to staff in county agencies through the Ohio Human Services Training System. The agreement refers to the county

department of job and family services as the “regional training center.” The agreement refers to the judge as the “trainer.” The state department of job and family services (ODJFS) is the contract manager and serves as the state coordinator for the Ohio Human Services Training System. The regional training coordinator is responsible for the operation of the regional training center and the Ohio Human Services Training System. The regional training coordinator collaborates with the trainers to determine course outline, training content, methods of presentation, and handouts for the training program.

Prior to serving as a trainer, a probate judge would attend an orientation and training session sponsored by the Ohio Human Services Training System. At the session, the judge/trainer is asked to sign a statement “I have reviewed Ohio R.C. 102.04 and I am in compliance with all provisions of this section.” R.C. 102.04 is a provision of Ohio Ethics Law addressing compensation, but the courts are expressly excluded from this provision. Therefore, R.C. 102.04 is not further discussed herein, other than to observe that there is no reason for a judge to sign such a statement. Sections of Ohio Ethics Law pertinent to judges are addressed below.

The signed agreement between the judge/trainer and the county department of job and family services/regional training center establishes the dates, times, topic, and location. The trainer agrees to collaborate with the regional training coordinator to determine the course outline, training content, methods of presentation and handouts. The trainer agrees to work with the Ohio Human Services Training System to ensure that the training is culturally specific and promotes cultural competence. The trainer agrees to provide handouts to the regional coordinator. The trainer agrees to provide travel, lodging and personal arrangements and costs of completing the activities. The trainer agrees to pay all income taxes and social security payments on moneys earned. The trainer agrees to assume responsibility for personal liability insurance and for accidents or injury. The trainer agrees that he or she may be removed for failure to meet the standards in the application and certification process.

Pursuant to the agreement, the state coordinator/contract manager (the state department of job and family services) “retains the right to review and approve all training plans and materials to be used by the trainer in the implementation of training activities and to make the final determination of the scope and nature of the training services provided by the Trainer.”

Pursuant to the agreement, upon completion of the training days designated in the contract, the county department of job and family services/central regional training center, acting as the Fiscal Agent for the Ohio Human Services Training System, pays the trainer five hundred dollars per training day of six in-class hours.

Judges are subject to the Ohio Code of Professional Responsibility, the Ohio Code of Judicial Conduct and Ohio Ethics Law

As attorneys and officers of the court, judges are subject to the Ohio Code of Professional Responsibility and the Ohio Code of Judicial Conduct. See Gov.Jud. R. I § 1. As public officers, judges are subject to Ohio Ethics Law. See Ohio Rev. Code Ann § 102.01(B)-(C).

The Ohio Code of Judicial Conduct and Ohio Ethics Law are pertinent to the question presented. As addressed herein, the proposed teaching activity is permitted by the Ohio Code of Judicial Conduct, but compensation for the proposed teaching activity is inappropriate under both the Ohio Code of Judicial Conduct and Ohio Ethics Law.

Judges are permitted by the Ohio Code of Judicial Conduct to engage in teaching activities.

The reference to a judge's teaching activities appears in Canon 2(A)(1) of the Ohio Code of Judicial Conduct: "A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice." Although it is unstated in the Code, it is logical that a judge also may write, lecture, teach, and speak on non-law related subjects.

Canon 2(A) conditions a judge's ability to engage in such activities upon the requirement that the "activities do not cast doubt on the judge's capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties."

Compensation for a engaging in a teaching activity is not always proper

Compensation for teaching activities is generally permitted by the Ohio Code of Judicial Conduct, but subject to conditions imposed by the Code. Compensation for teaching activities is also subject to restrictions imposed by Ohio Ethics Law.

Under Canon 2(D) and 2(D)(1)-(2) of the Ohio Code of Judicial Conduct, a judge may accept compensation or reimbursement for activities permitted by the Code, provided that: 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; the compensation does not exceed a reasonable amount or what a non-judge would receive for the same activity; and the expense reimbursement is limited to the actual cost of travel, food, and lodging reasonably incurred. But, compensation must be reported. Under Canon 2(D)(3)(a) an annual financial disclosure form must be filed, and under Canon 2(D)(3)(b) an annual quasi-judicial or extra-judicial activity form must be filed.

Ohio Ethics Law sharply curtails the ability of a judge to accept certain compensation even if permitted by the Ohio Code of Judicial Conduct.

Judges are not permitted to accept an honorarium under Ohio Ethics Law.

Ohio Ethics Law amendments, effective May 12, 1994, prohibit public officials or employees, from accepting compensation considered an “honorarium.”

R.C. 102.03 (H)(1) No public official or employee . . . who is required to file a financial disclosure statement under section 102.02 of the Revised Code shall solicit or accept, and no person shall give to that public official or employee, an honorarium.

Ohio Rev. Code Ann. § 102.03(H)(1) (West Supp. 2005).

Honorarium is expansively defined in R.C. 102.01(H), circumscribing compensation for a broad range of activities, including payment for any speech given.

R.C. 102.01(H) ‘Honorarium’ means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or similar gathering. ‘Honorarium’ does not include ceremonial gifts or awards that have insignificant monetary value; unsolicited gifts of nominal value or trivial items of informational value; or earned income from any person, other than a legislative agent, for personal services that are customarily provided in connection with the practice of a bona fide business, if that business initially began before the public official or employee conducting that business was selected or appointed to the public official’s or employee’s office or position of employment.

Ohio Rev. Code Ann. § 102.01(H) (West Supp. 2005).

The Board has expressed the view that certain teaching activities are distinct from the category of “any speech given” and therefore do not fall within the ban on honorarium. Compensation for teaching a college or university course or a continuing legal education class is not considered an honorarium. See Bd. Comm’rs on Grievances & Discipline, Op. 94-12 (1994) (advising that a judge may accept compensation for teaching a college or university course on topics related to the law, the legal system, or the administration of justice); Bd. Comm’rs on Grievances & Discipline, Op. 95-9 (1995) (advising that a judge may accept compensation for teaching continuing legal education classes or courses). But compensation for other speaking activities is considered prohibited honorarium. See Bd. Comm’rs on Grievances & Discipline, Op. 95-9 (1995) (advising that a judge may not accept compensation for presenting motivational speeches).

Why did the Board distinguish certain teaching activities from “any speech given”? Teaching involves more rigorous requirements than general speaking activities. Teaching imparts knowledge and skill as part of a planned educational process. In teaching college courses, academic goals are defined and academic credit is offered. Students must earn credit to reach academic goals. Instructors must be qualified. Instructors have duties beyond the classroom hour. As to teaching a continuing legal education course, the Commission on Continuing Legal Education of the Supreme Court of Ohio sets standards and monitors the education offerings. The instructors must submit teaching materials for approval. The instructors earn continuing legal education credit for teaching. The participants earn continuing legal education credits to reach goals, such as keeping their professional law licenses in good standing. The participant’s educational credits are reported to and monitored by the Commission on Continuing Legal Education of the Supreme Court of Ohio. See Bd. Comm’rs on Grievances & Discipline, Op. 95-9 (1995) and 94-12 (1994).

Speaking activities are characteristically a singular or isolated event, not part of a planned educational process. When giving a speech, a speaker’s duties are often limited to the preparation and delivery of the speech. No academic credit is offered and no credits are earned by students. See Bd. Comm’rs on Grievances & Discipline, Op. 95-9 (1995).

Judges must abide by Ohio Ethics Law which broadly bans honorariums for judges and other public officials. Thus, the Board is reluctant to distinguish the proposed training course for county employees as a teaching activity not subject to the honorarium ban. Teaching an inservice training for employees of county departments of job and family services is important and educational, but it is not a teaching activity with the same rigors and requirements as teaching a college or university course, nor is it a teaching activity subject to the rules and requirements of the Commission on Continuing Legal Education of the Supreme Court of Ohio. For a judge, such activity falls more into the category of “any speech given” for which compensation is not proper.

Judges must uphold the integrity and independence of the judiciary under the Ohio Code of Judicial Conduct

Canon 1 of the Ohio Code of Judicial Conduct requires judges to uphold the integrity and independence of the judiciary. Compensation to a judge by another branch of government for providing training to the government employees is inappropriate under Canon 1 of the Ohio Code of Judicial Conduct.

Under Canon 1, the independence and integrity is not upheld when a probate judge receives compensation from a county department of job and family services for teaching a training course to county employees who are at times involved in matters before a probate juvenile court.

Under Canon 2(D)(1) there is the further consideration that the source of the compensation, ODJFS, might give the appearance of influencing the judge in his or her judicial duties or otherwise give the appearance of impropriety because the judge hears cases involving the employees of ODJFS.

Judges may not solicit or receive improper compensation under Ohio Ethics Law.

R.C. 2921.43 is a provision of Ohio Ethics Law prohibiting public servants from soliciting or receiving improper compensation. Judges and other public officials are public servants for purposes of R.C. 2921.43. See Ohio Rev. Code Ann. § 2921.01(A), (B) (West Supp. 2005).

§2921.43 Soliciting or receiving improper compensation

(A) No public servant shall knowingly solicit or accept, and no person shall knowingly promise or give to a public servant, either of the following:

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform the public servant's official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

(2) Additional or greater fees or costs than are allowed by law to perform the public servant's official duties.

Ohio Rev. Code Ann. § 2921.43(A)(1)-(2) (West Supp. 2005).

When a judge agrees to provide training for government employees in need of the judge's expertise, he or she is agreeing to perform an act or service in his or her judicial capacity.

Compensation to a probate judge for teaching a six hour course on the topic of adult protective services at a training program for employees of county departments of job and family services is improper compensation to the judge for performing an act or service in his or her judicial capacity under Ohio Ethics Law, R.C. 2921.43(A)(1).

Judges are prohibited by Ohio Ethics Law from having an unlawful interest in a public contract

R.C. 2921.42 is a provision of Ohio Ethics Law that prohibits a judge from having an unlawful interest in a public contract.

§ 2921.42. Having an unlawful interest in a public contract.

(A) No public official shall knowingly do any of the following:

- (1) Authorize, or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates has an interest;

Ohio Rev. Code Ann. §2921.42(A)(1) (West 1997).

When a probate judge enters an agreement with ODJFS to provide training courses to county employees for compensation, the probate judge has authorized a public contract in which he or she has a financial interest.

Such financial interest is prohibited unless the judge could meet the requirements of the safe harbor provision provided in R.C. 2921.42(C).

R.C. 2921.42(C) This section does not apply to a public contract in which a public official, member of his family, or one of his business associates has an interest, when all of the following apply:

- (1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;
- (2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;
- (3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;

- (4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of his family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract.

Ohio Rev. Code Ann. §2921.42(C) (West 1997).

Whether the safe harbor provision could be met depends upon the facts and circumstances. This determination is not necessary since the proposed conduct is improper under other provisions of Ohio Ethics Law and the Ohio Code of Judicial Conduct.

Conclusion

The Board advises as follows. A probate judge may teach a six hour course on the topic of adult protective services at a training program for employees of county departments of job and family services, provided the activity does not interfere with the performance of judicial duties, but the probate judge should not accept compensation. Compensation for such activity is prohibited under both the Ohio Code of Judicial Conduct and Ohio Ethics Law. Compensation to the probate judge from the state department of job and family services does not uphold the integrity, independence, and impartiality of the judiciary as required under Canons 1 and 2 of the Ohio Code of Judicial Conduct and would be an honorarium, improper compensation, and an unlawful interest in a public contract under Ohio Ethics Law. Prospective application of this opinion is recommended.

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. Pursuant to Section 102.02 of the Ohio Revised Code, the requester of the opinion may reasonably rely on the opinion as it applies to Ohio Ethics Law and related statutes.