

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

41 SOUTH HIGH STREET-SUITE 3370, COLUMBUS, OH 43215-6105
(614) 644-5800 FAX: (614) 644-5804

OFFICE OF SECRETARY

OPINION 89-17

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[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

[Not Current- subsequent rule amendments to Canons 1 through 6, Ohio Code of Judicial Conduct, eff. May 1, 1997 and to Gov. Bar R. III, Jan. 1, 1993 and Nov. 1, 1995]

SYLLABUS: Full-time judges who hold shares in their former legal professional associations would be creating the appearance of impropriety. Judges should divest themselves of any investments which would require their disqualification under Canons 5C and 3C of the Code of Judicial Conduct. Governing Bar Rule III prohibits an attorney from being associated in any capacity with a legal professional association other than one in which the attorney is actively and publicly associated.

OPINION: We have before us two requests for advisory opinions on whether a judge can maintain an interest in the judge's former legal professional association (LPA). The first requesting party, a minority shareholder in an LPA, is considering creating a trust for the departing majority shareholder, who is taking the bench. The requesting party would be the trustee and the judge would have no control over the trustee's decisions and would receive no income from the corporation. The stock held in trust would be transferred back to the judge when he steps down from the bench. The second request simply asks whether a shareholder in a professional legal corporation must divest himself of his ownership interest upon taking the bench, even if he receives no income of any kind as a result of such stock ownership.

Under Canon 2 of the Code of Judicial Conduct, a judge should avoid impropriety and the appearance of impropriety in all the judge's activities. In addition, judges should not allow any of their relationships to influence their conduct or judgment. Code of Judicial Conduct 2B. In our view, judges who maintain any interest in their former law practice, no matter how it is structured, would be creating the appearance of impropriety.

Furthermore, Canon 5C provides in part:

1. A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

3. A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

Holding shares in a former law practice would adversely reflect on the judge's impartiality in cases where the former firm is involved. This would be true even if the shares were held in trust and the judge was not receiving any income from his former practice. In this regard, an attorney may not be associated in any capacity with an LPA other than one in which he or she is actively and publicly associated. Gov. Bar R. III §3(D).

Canon 3C also requires a judge's disqualification in cases where impartiality might reasonably be questioned. A judge who maintains a financial interest in his or her former law practice may be precluded from hearing cases involving the former law firm. This situation can be avoided if the judge is divested of all financial interests in the law firm.

In conclusion, it is our opinion and you are so advised that newly appointed judges should divest themselves of all financial interests in legal professional associations with which they have been associated.

This is an informal, non-binding advisory opinion based upon the questions presented and limited to questions arising under the Code of Judicial Conduct and Code of Professional Responsibility.