

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 91-28

Issued December 6, 1991

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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

SYLLABUS: The clerk and deputy clerk of the Court of Claims are not required under Section 102.02 of the Ohio Revised Code to file annual financial disclosure statements, but are persons whom the Board could require to file through rule-making procedures of Chapter 119. However, under Canon 6(C) and the Compliance Section of the Code of Judicial Conduct, the clerk and deputy clerk of the Court of Claims must file financial disclosure statements with the Secretary of the Board of Commissioners on Grievances and Discipline.

OPINION: The question presented is whether the clerk and deputy clerk of the Court of Claims must file annual financial disclosure statements with the Board of Commissioners on Grievances and Discipline. To answer this question, the Board must apply Section 102.02 of the Ohio Revised Code and Canon 6C of the Code of Judicial Conduct.

Ohio Ethics Law (Chapter 102 of the Ohio Revised Code)

Section 102.02 (A) of the Ohio Revised Code identifies categories of individuals who must file financial disclosure statements with the appropriate ethics commission. The Board of Commissioners on Grievances and Discipline is the appropriate ethics commission for matters relating to judicial officers and employees. See Ohio Rev. Code Ann. § 102.01(F)(2) (Baldwin 1987). A judge is required to file financial statements under Section 102.02 (A) because a judge falls within the category of "person who is elected to or is a candidate for a state, county, or city office." However, the Clerk and Deputy Clerk of the Court of Claims do not fall within the categories listed.

Section 102.02(B) of the Ohio Revised Code authorizes the Board of Commissioners on Grievances and Discipline to use rule-making procedures of Chapter 119 of the Ohio Revised Code to "require any class of public officials or employees under its jurisdiction and not specifically excluded by this section whose positions involve a substantial and material exercise of administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws and rules of the state or a county or city, or the execution of other public trusts, to file an annual statement."

The duties of the clerk of the Court of Claims are set forth in Sections 2743.09 and 2743.10 of the Ohio Revised Code. For example, these duties include establishing procedures for hearing and determining claims [§2743.09 (H)], charging and collecting fees and keeping a cashbook [§2743.09 (F)], making administrative determinations in certain civil actions against the state [§2743.10]. See Ohio Rev. Code Ann. §§ 2743.09 and 2743.10 (Baldwin 1990). Further, the powers of the clerk and the deputy clerk are defined in Rule 6(C) of the Rules of the Court of Claims of Ohio: "In administrative determinations, the clerk or deputy clerk has the same power as a judge of the court of claims to regulate all proceedings before him. He may, among other things, conduct hearings, require the production of evidence, rule upon motions, determine admissibility and probative value of evidence, require submission of briefs or memoranda, summon and compel attendance of witnesses, including parties, and call and examine them under oath."

As to Ohio Ethics Law, it is our conclusion that although the Clerk and Deputy Clerk of the Court of Claims are not required under statute to file annual financial disclosure statements, they are persons whom the Board could require to file through rule-making procedures of Chapter 119.

Code of Judicial Conduct

Canon 6C requires judges to file annual disclosure statements with the Secretary of the Board of Commissioners on Grievances and Discipline.

A judge should file annually the disclosure statement required by R.C. 102.02 and a report of the date, place, and nature of any quasi-judicial or extra-judicial activity for which he received compensation, and the name of the payor [sic] and the amount of compensation so received for such quasi-judicial or extra-judicial activity with the Secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio and with the clerk of the court on which he serves or for such activity in multi-county judicial districts with either the clerk of the court of his county of residence or the clerk of the court of the most populous county in such district. The report required to be filed with the Board of Commissioners on Grievances and Discipline shall be filed by April 15 of each year on forms provided by the Board.

Code of Judicial Conduct Canon 6(C).

Under the Compliance Section of the Code of Judicial Conduct, “[a]nyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code.” The Compliance Section requires that all judges should comply with the Code but sets forth exceptions for part-time judges, judges pro tempore, and retired judges. A clerk and deputy clerk of the Court of Claims would not fall within these exceptions and thus having “the same power as the judge of the court of claims” and “performing judicial functions” by statute and rule, they must comply with the Code of Judicial Conduct.

A requirement of Canon 6(C) is to “file annually the disclosure statement required by R.C. 102.02.” Canon 6(C) does not include the words “as required” or “if required.” Canon 6(C) merely identifies what reports must be filed, one of which is a financial disclosure statement. Therefore, it is our opinion that under Canon 6(C) and the Compliance Section of the Code of Judicial Conduct, the clerk and deputy clerk of the Court of Claims must file the financial disclosure statements with the Secretary of the Board of Commissioners on Grievances and Discipline.

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