

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 94-12**

Issued October 14, 1994

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*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 Ohio Code of Judicial Conduct and Ohio Ethics Law (Chapter 102 of the Ohio Revised Code) permit a judge to accept compensation for teaching at state or private colleges or universities on topics related to the law, the legal system, or the administration of justice. Compensation must be disclosed and reported, must be reasonable, must not exceed what a person who is not a judge would receive, and must not be of a character as to manifest a substantial and improper influence upon the judge with respect to the judge's duties.

**OPINION:** This opinion addresses whether both the Ohio Code of Judicial Conduct and Ohio Ethics Law permit a judge to accept compensation for teaching at state or private colleges or universities on topics related to the law, the legal system, or the administration of justice.

As officers of the court, judges must abide by the Ohio Code of Judicial Conduct. See Gov.Jud.R. I §1. As public officials, judges are also subject to Ohio Ethics Law set forth in Chapter 102 of the Ohio Revised Code and related statutes. See Ohio Rev. Code Ann. §§ 102.01(B) and 102.01(F)(2).

Amendments to Ohio Ethics Law (Chapter 102 of the Ohio Revised Code), effective May 12, 1994, prohibit public officials from soliciting or accepting honorariums. Thus, the Board is asked for guidance as to whether a judge's compensation for teaching at a state or private college or university remains proper or is now prohibited as banned honorarium. The Board must review the authority within both the Ohio Code of Judicial and Ohio Ethics Law.

The Code of Judicial Conduct, Canons 4A, 5A, 6A, and 6B, expressly permits a judge to write, teach, lecture, and speak on both law related and non-law related subjects and to receive compensation and expense reimbursement. Canon 6C requires that two public reports be made, the financial disclosure statement required by Section 102.02 of the Ohio Revised Code and a report of quasi-judicial or extra-judicial compensation on a form provided by the Board of Commissioners on Grievances and Discipline.

**Canon 4** A judge, subject to the proper performance of his [her] judicial duties, may engage in the following quasi-judicial activities, if in doing so he [she] does not cast doubt on his [her] capacity to decide impartially any issue that may come before him [her]:

A. He [she] may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

**Canon 5 A. Avocational Activities.** 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 [her] office or interfere with the performance of his [her] judicial duties.

**Canon 6** A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his [her] judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

**A. Compensation.** Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

**B. Expense reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge, and where appropriate to the occasion, by his [her] spouse. Any payment in excess of such an amount is compensation.

**C. Public Reports.** 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 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 [her] 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.

Over the past seven years, it has been the Board's consistent opinion that under the Code of Judicial Conduct it is proper for judges to engage in teaching and writing activities and to receive compensation and reimbursement of expenses. See Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Op.86-002 (1987) (a common pleas judge may instruct a class at a state university and receive reimbursement for reasonable and necessary expenses as long as the activities do not interfere with his or her judicial duties); Op. 89-28 (1989) (a judge may accept reasonable compensation for teaching college and university courses concerning the law, the legal system, and the administration of justice, provided the source of such payment does not give the appearance of influencing the judge or otherwise give the appearance of impropriety); Op. 91-10 (1991), (a judge is permitted to participate in the preparation and presentation of legal and non-legal educational materials to lawyers and non lawyers for compensation, but is not permitted to participate as a partner in a partnership for profit to provide continuing legal education); Op. 87-008 (1987) (a judge may write a foreword to a book on the bicentennial); Op. 89-21 (1989) (a judge is permitted to write articles for publication on legal topics and may receive reasonable compensation provided the source of the payment does not give the appearance of influencing the judge or otherwise give an appearance of impropriety). Since there have been no amendments to Canons 4, 5, and 6 of the Code of Judicial Conduct, it remains the Board's view that the Code of Judicial Conduct permits compensation for teaching activities. Nevertheless, the Board must consider the implication of statutory amendments to Ohio Ethics Law.

Chapter 102 of the Ohio Revised Code was amended with the passage of Amended Substitute House Bill 492, effective May 12, 1994. For complete text see 1994 Ohio Legis. Serv. 5-40 (Baldwin). Section 102.03 (H) now prohibits public officials and employees from soliciting and accepting honorariums.

**Section 102.03(H)** 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. ...

The term "honorarium" is broadly defined within Section 102.01 (H).

**Section 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 elected or appointed to his [her] office or position of employment. [Emphasis added].

If the category of "any speech given" in Section 102.01(H) includes teaching a law related class at a state or private university or college, then compensation for the teaching activity would be banned as honorarium under Section 102.03(H).

It is the Board's view that teaching and speaking are not necessarily identical activities. In fact, the words "teach" and "speak" are not synonyms. To teach is to impart knowledge and skill. To speak is to engage in spoken exchange. See e.g., Roget's II The New Thesaurus 878, 939 (1980).

Teaching at a state or private university or college is an activity intended to impart knowledge and skill. The courses taught are part of a planned educational process. Academic goals are defined. Academic credit is offered and must be earned. Students enroll in the courses to earn credit and reach academic goals. Instructors must be qualified to teach the subject matter presented. Instructors perform various duties such as planning lessons, giving lectures, guiding discussions, administering tests, performing evaluations, and remaining available for consultation if needed beyond the classroom hours. In contrast, a speaking activity is characteristically a singular or isolated event, not part of a planned educational process. Academic credit is not offered or earned. Students are not enrolled in order to earn credit and reach goals. A speaker's duties are usually limited to preparation and delivery of the speech.

Based upon these distinctions, it is the Board's view that a judge's teaching of a law related class at a university or college does not fall within the statutory category of "any speech given." Thus, a judge's compensation for teaching law related classes at a college or university would not be banned as an honorarium. However, the compensation would be subject to other restrictions within both the Ohio Code of Judicial Conduct and Ohio Ethics Law. First, compensation is subject to disclosure and reporting requirements under Section 102.02 of the Ohio Revised Code and Canon 6C of the Code of Judicial

Conduct. Second, compensation would be subject to the Canon 6 requirement that "the source of such payments does not give the appearance of influencing the judge in his [her] judicial duties or otherwise give the appearance of impropriety." Third, compensation would be subject to the Canon 6A requirement that it be a "reasonable amount" and "not exceed what a person who is not a judge would receive for the same activity." Fourth, under Sections 102.03(D), (E), (F) of the Ohio Revised Code, the compensation must not be of "such a character as to manifest a substantial and improper influence upon him [her] with respect to his [her] duties," such as substantial compensation from a party that is interested in matters before, regulated by, or doing or seeking to do business with the judge's court. For past discussion of substantial and improper influence, see Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Ops. 92-14 (1992) and 92-18 (1992).

In conclusion, this Board advises that the Ohio Code of Judicial Conduct and Ohio Ethics Law (Chapter 102 of the Ohio Revised Code) permit a judge to accept compensation for teaching at state or private colleges or universities on topics related to the law, the legal system, or the administration of justice. Compensation must be reported and disclosed, must be reasonable, must not exceed what a person who is not a judge would receive, and must not be of a character as to manifest a substantial and improper influence upon the judge with respect to the judge's duties.

**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.**