

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 95-9

Issued August 4, 1995

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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: It is proper under both the Ohio Code of Judicial Conduct and Ohio Ethics Law for a judge to accept compensation for teaching continuing legal education classes or courses.

It is proper under the Ohio Code of Judicial Conduct for a judge to accept compensation for presenting motivational speeches, but it is improper under Ohio Ethics Law.

OPINION: This opinion addresses the propriety of judges accepting compensation for presenting motivational speeches and teaching continuing legal education.

Is it proper under the Ohio Code of Judicial Conduct and Ohio Ethics Law for a judge to accept compensation for teaching continuing legal education classes or courses?

Is it proper under the Ohio Code of Judicial Conduct and Ohio Ethics Law for a judge to accept compensation for presenting motivational speeches?

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. See Ohio Rev. Code Ann. §§ 102.01 (B) and (C) (Baldwin 1994).

Under Canon 4 of the Ohio Code of Judicial Conduct, judges may write, lecture, teach, and speak on law related subjects. Under Canon 5A, judges may write, lecture, teach, and speak on non-law related subjects.

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.

The commentary to Canon 4 encourages judges to engage in quasi-judicial activities that improve the law, the legal system, and the administration of justice. The commentary to Canon 5A warns that it is neither possible nor wise to completely separate a judge from extra-judicial activities and to isolate the judge from society.

Under Canon 6, compensation for writing, lecturing, teaching, and speaking is permitted with conditions. The source of the payment must not give the appearance of improper influence or impropriety, the compensation must be reasonable and not exceed what a person who is not a judge would receive, and the compensation must be reported to the Board of Commissioners on Grievances and Discipline.

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 [she] 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 [she] 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.

Thus, under the Ohio Code of Judicial Conduct it is proper for a judge to accept compensation for presenting motivational speeches. It is also proper under the Ohio Code of Judicial Conduct for a judge to accept compensation for teaching continuing legal education classes or courses. Canons 4, 5A, and 6 of the Code permit and support such conduct.

In contrast, Ohio Ethics Law, Chapter 102 as amended, effective May 12, 1994 prohibits public officials and employees from accepting any compensation that is considered to be an "honorarium." Honorarium is so broadly defined by statute that it circumscribes compensation for a broad range of activities. See Ohio Rev. Code Ann. §102.03 (H) and 102.01(H) (Baldwin 1994) set forth in part below.

R.C. § 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.

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 elected or appointed to his [her] office or position of employment. (Emphasis added.)

In Opinion 94-12, this Board advised that "[t]he Ohio Code of Judicial Conduct and Ohio Ethics Law (Chapter 102 of the 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." See Ohio SupCt, Bd of Comm'rs on Griev & Disc, Op.94-12 (1994). The Board determined that teaching a law related class at a state or private college did not fall within the statutory category of "any speech given." Thus, compensation for teaching the classes was not banned as honorarium under Ohio Ethics Law. Id.

In Opinion 94-12, "teaching" was distinguished from "speaking." Teaching a college course was considered an activity intended to impart knowledge and skill. The courses are part of a planned educational process. Academic goals are defined. Academic credit is offered. Students earn credit to reach academic goals. Instructors must be qualified and have various duties beyond the classroom hour. Whereas, speaking activities were considered to be characteristically a singular or isolated event, not part of a planned educational process. No academic credit is offered. Students are not earning credit to reach goals. The speaker's duties are limited to preparation and delivery of the speech. Id.

Teaching a continuing legal education course to participants who are earning educational credits reported to and monitored by the Commission of Continuing Legal Education of the Supreme Court of Ohio is more similar to "teaching" than it is to "speaking." Standards are set forth by the Commission. Speakers must be qualified. Speakers earn continuing legal education credits for teaching. Participants earn credits to reach goals, one goal being to keep their professional law licenses in good standing.

In contrast, motivational speeches fit squarely within the category of "any speech given." Thus, compensation would be prohibited by Ohio Ethics Law. The Board's view is not meant to disparage motivational speeches. The Board regrets the conclusion under Ohio Ethics Law because it is inconsistent with the Ohio Code of Judicial Conduct. Yet, the Board is constrained by the language of the statute. Although the Code of Judicial Conduct permits compensation to a judge for presenting a motivational speech, the Ohio Ethics Law prohibits such compensation. Whether or not the intent of the statute was to sweep so broadly is not for this Board to speculate. Nor, does this Board have authority to advise regarding whether a state statute impermissibly encroaches upon a state supreme court's inherent judicial power in violation of separation of powers doctrine.

In conclusion, this Board advises it is proper under both the Ohio Code of Judicial Conduct and Ohio Ethics Law for a judge to accept compensation for teaching continuing legal education classes or courses. It is proper under the Ohio Code of Judicial Conduct for a judge to accept compensation for presenting motivational speeches, but it is improper under Ohio Ethics Law. Because these two authorities are not in harmony, this Board finds only prospective application of this opinion to be appropriate.

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.