

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 95-10**

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*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*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 for a lawyer who co-owns a farm with his or her spouse to continue to raise beef cattle and to sell hay, grain, and seed after taking the bench as a full-time judge.

It is proper for a lawyer who is a certified public accountant to continue to gratuitously prepare tax returns for self and family after taking the bench as a full-time judge, however, the judge should not prepare tax returns for friends and others.

**OPINION:** This opinion addresses the propriety of a lawyer continuing certain business and professional activities after taking the bench as a full-time judge.

1. Is it proper for a lawyer who co-owns a farm with his or her spouse to continue to raise beef cattle and to sell hay, grain, and seed after taking the bench as a full-time judge?
2. Is it proper for a lawyer who is a certified public accountant to continue to gratuitously prepare tax returns for family and friends after taking the bench as a full-time judge?

### Question One

Is it proper for a lawyer who co-owns a farm with his or her spouse to continue to raise beef cattle and to sell hay, grain, and seed after taking the bench as a full-time judge?

A basic premise of the Code of Judicial Conduct is that judges must accept restrictions beyond those that ordinary citizens accept. Financial and business activities are strictly regulated under Canon 5C in order to preserve and promote integrity and impartiality within the judiciary.

### **Canon 5C. Financial Activities**

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

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.

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

The 1972 ABA Code of Judicial Conduct contained two versions of Canon 5C(2), the above version and an alternate version. The alternate version allowed a judge to operate a business and was intended only as a stop-gap standard in jurisdictions not willing or able to provide adequate salaries for judges. See E. Wayne Thode, Reporter's Notes to the Code of Judicial Conduct, 22-3, 80-3 (1973). Ohio did not adopt the alternate version. Ohio's choice of the more stringent version of Canon 5C(2) makes it improper for judges in Ohio to operate a business.

There is ambivalence within Canon 5C (2) as to what constitutes a business activity.

This ambivalence concerning the technical format of business activity is reflected in the Code itself. Canon 5C (2) specifically allows judges to hold and manage real estate investments, while prohibiting active involvement in "any business." This is a very fine line, and not one which is easy to draw intuitively. At some point the management of real estate becomes a business. This transition may hinge on a variety of factors, such as the form of organization or the profitability of the venture. Nonetheless, it is difficult to see why the operation of a ranch should be permissible, while titular involvement in a real estate brokerage should be cause for disciplinary action. It may be that real estate management was specifically endorsed so as not to compel rural judges to "sell the farm," but there must also be some constituency for the pont [sic] of view that small town judges should not be required to "give away the store."

S. Lubet, Beyond Reproach: Ethical Restrictions on the Extrajudicial Activities of State and Federal Judges, 19 (1984) (footnotes omitted).

This Board's view is that farming falls within the permitted scope of management of real estate and outside the prohibited area of involvement in any business. Farming is an activity that is compatible with the conditions imposed under Canon 5C(1)--it does not reflect adversely on a judge's impartiality; it does not interfere with the proper performance of judicial duties so long as it is not performed on work time; it does not exploit a judicial position; and it does not necessarily involve a judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. Farming probably would not result in frequent disqualification for a judge, thus farming is an activity that is compatible with Canon 5C(3)-- "A judge should manage his [her] investments and other financial interests to minimize the number of cases in which he [she] is disqualified. As soon as he [she] can do so without serious financial detriment, he [she] should divest himself [herself] of investments and other financial interests that might require frequent disqualification."

In conclusion, this Board advises that it is proper for a lawyer who co-owns a farm with his or her spouse to continue to raise beef cattle and to sell hay, grain, and seed after taking the bench as a full-time judge. These activities fall within the permitted area of management of real estate under Canon 5C(2).

#### Question Two

Is it proper for a lawyer who is a certified public accountant to continue to gratuitously prepare tax returns for family and friends after taking the bench as a full-time judge?

The accounting services would be provided "gratuitously" for family and friends. However, whether or not a fee is paid for the services is not the threshold issue. The threshold issue is whether a full-time judge may engage in activities of the profession of a certified public accountant.

There are various views. In Missouri, a judge violates Canon 5 (C) (1) by preparing state and federal income tax returns after hours for compensation. See Missouri, Comm'n on Retirement, Removal and Discipline, Op. 20 (undated). In Maryland, a judge may not continue to act as an accountant. See Maryland, Judicial Ethics Comm., Op. 8 (1972). But, in Alabama, a probate judge may engage in practice as a certified public accountant after hours and on weekends. See Alabama, Judicial Inquiry Comm'n, Op. 82-129 (1982).

The Ohio Code of Judicial Conduct does not expressly address the question. Canon 5F of the Ohio Code of Judicial Conduct prohibits a full-time judge from practicing law, but does not address the practice of other professions. Canon 5C addresses a judge's participation in businesses, but does not mention participation in other professions.

Yet, the prohibition in Canon 5F as to the practice of law is instructive as to the question raised. The activities of a certified public accountant when performed by an attorney are closely intertwined with the practice of law. Thus, in this Board's view a full-time judge who provides services as a certified public accountant would violate the Canon 5F prohibition as to the practice of law, regardless of whether or not there is compensation for the services. Nevertheless, a judge should not be denied the right as a citizen to prepare tax returns for self and family--the personal nature of that activity is inviolate, however, preparation of tax returns for friends and others receives no reprieve.

In conclusion, this Board advises that it is proper for a lawyer who is also a certified public accountant to continue to gratuitously prepare tax returns for self and family after taking the bench as a full-time judge, but the judge should not prepare tax returns for friends and others.

**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.**