

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 87-008

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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: Under the Code of Judicial Conduct as adopted in Ohio, a judge is permitted to write a foreward to a book on the bicentennial of the United States Constitution.

OPINION: We have before us your request for our opinion on whether, under the Code of Judicial Conduct (the "Code") or any other applicable statutes or rules, Chief Justice Moyer is permitted to write a foreward for a book on the bicentennial of the U.S. Constitution. In your request letter you state that the Chief Justice would not receive any remuneration for his effort.

There is nothing in the Code which prohibits a judge from extra-judicial writing. In fact, the Code encourages a judge to write, lecture, teach or speak on legal and non-legal subjects. Code of Judicial Conduct, Canon 4(A) and 5(A) (1973). While the Code espouses the notion that a judge may engage in extra-judicial writing in the interest of law improvement, it also limits a judge's quasi-judicial and extra-judicial activities to those which: 1) do not cast doubt on his capacity to impartially decide any issue which may come before him, 2) do not detract from the dignity of his office and 3) do not interfere with the performance of his judicial duties. Id.

Provided none of these prohibitions exist, nonjudicial activities should be encouraged if their performance will "enrich and educate the audiences to which the judge lectures, writes, or teaches," McKay, The Judiciary and Nonjudicial Activities, 35 L. & Contemp. Prob. 9, 20 (1970). Writing a foreward to a book about the Constitution's bicentennial--the very document which forms the foundation of American law--undoubtedly is the type of activity the framers of the Code intended to encourage.

In Professor McKay's article he states:

[i]t would be easy, but intellectually lazy, to hold that the sole business of judges is judging, that all else is at least distracting, and that accordingly a judge should avoid all nonjudicial activities that might either be time-consuming or influence his opinion on matters that come before him . . . [t]o judge in the real world a judge must live, breathe, think, and partake of opinions in the world. Id. at 12.

We agree with this statement, and encourage judges across Ohio to contribute their expertise in the interest of improving the law and society within the limitation set forth in the Code.

In conclusion, it is our opinion, and you are so advised, that the writing of a foreward to a book on the U.S. Constitution, without remuneration, by the Chief Justice of the Ohio Supreme Court, does not violate the Code of Judicial Conduct.

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

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Secretary, Board of Commissioners
on Grievances and Discipline