

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 89-22

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[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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 and amendments to Chapter 102, Ohio Revised Code]

SYLLABUS: Under Canon 4C of the Code of Judicial Conduct, a judge is encouraged, to the extent time permits, to serve as a member, officer, or director of an organization devoted to the improvement of the law, the legal system or the administration of justice. Canon 4C does not prohibit a judge from serving as trustee of a claimant's fund, set up by an out-of-state bankruptcy court, which will administer and supervise the resolution of claims from persons injured from exposure to products containing asbestos manufactured by the corporation which is the subject of the bankruptcy.

The judge's participation in such an alternative dispute resolution must not affect the proper performance of his judicial duties. A judge must also not act as an arbitrator under Canon 5E. The judge should not become a trustee if the position will require his disqualification as judge. However, we do not believe that the position would cast doubt on the judge's capacity to impartially perform his duties as judge. Any compensation the judge receives should not exceed a reasonable amount nor exceed what a person who is not a judge would receive for the same activity. Any compensation should also be properly disclosed, pursuant to Canon 6(C) of the Code.

OPINION: We have before us a request for an opinion on whether a judge may accept a position as trustee of an asbestos disease victims' trust fund which will administer and supervise the resolution of claims against a bankrupt company which manufactured products containing asbestos. The trust fund was created by an out-of-state bankruptcy court as an alternative dispute resolution process. The trust is a not-for-profit organization and is independent of any other entity. The duties imposed by the acceptance of this position will not affect the expeditious handling of your docket.

Canon 4(C) of the Code of Judicial Conduct states:

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him: . . . [h]e may serve as a member, officer, or director of an organization . . . devoted to the improvement of the law, the legal system, or the administration of justice.

The commentary to Canon 4(C) encourages judges to engage in such activities, to the extent their time permits, through an organization dedicated to the improvement of the law. See, also, Coople, *From the Cloister to the Street: Judicial Ethics and Public Expression*, 64 U. Den. L. Rev. 549 (1988). In our opinion, the activity you propose is one which will improve the law, the legal system and the administration of justice.

The activities which Canon 4C authorizes is a means of keeping judges in contact with the world around them and making their expertise available in the ever-continuing effort to improve the law. Thode, Reporter's Notes Code of Judicial Conduct, 76 (1973). In our view, the alternative dispute resolution proposed by the bankruptcy court is designed to improve the administration of justice. Furthermore, you appear to be uniquely qualified for the position because of your judicial experience in the asbestos field, which furthers the objective of improving the administration of justice.

As you acknowledge in your request, you would have to disqualify yourself from any case before you, in which your impartiality might reasonably be questioned because of your position as trustee. See, Code of Judicial Conduct Canon 3(C). You do not anticipate any conflict in your positions as judge and trustee and indicate that you will continue to dispose promptly of your docket. However, if conflicting obligations arise which cause interference with your devotion to your judicial duties, then you must choose between the two positions and forgo one or the other.

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and Professional Responsibility, Informal Op. C-760 (1963). Likewise, the drafters of the Code indicated that judges must avoid quasi-judicial activities which are likely to lead to their disqualification. Thode, Reporter's Notes to Code of Judicial Conduct, 74 (1973).

Canon 5E prohibits a judge from acting as an arbitrator. Therefore, you may not serve as a trustee if the position involves you as an arbitrator.

With respect to the compensation you will receive as trustee, Canon 6 allows judges to receive compensation and reimbursement of expenses for the quasi-judicial activities permitted under the Code. Your 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. Code of Judicial Conduct, Canon 6A. Under Canon 6C, you must also report any quasi-judicial or extra-judicial compensation on your financial disclosure statement.

In conclusion, it is our opinion and you are so advised that you may, under the Code of Judicial Conduct, accept the position of trustee of the asbestos disease claims trust fund. You should continually be aware of any unforeseen conflicts which may lead to your disqualification or time constraints which affect the proper performance of your judicial duties. You must also avoid any appearance of impropriety under Canon 2. Finally, the position of trustee must not affect your ability to impartially decide cases you hear as judge.

This is an informal non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Judicial Conduct. This opinion does not address any statutory or constitutional provisions which may apply.