

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 89-29

Issued August 18, 1989

SYLLABUS: Based upon a recent change in Ohio Rev. Code Ch. 5122, directing probate court judges to refer mentally ill persons to community mental health boards, it is our opinion that probate court judges should no longer accept appointments for, or serve on, such boards.

OPINION: We have before us your request for an advisory opinion on whether it would be a conflict of interest for a probate judge or probate court personnel to serve as a member of a community mental health board. Under a new law, effective July 1, 1989, the probate court reviews and refers mentally ill persons subject to hospitalization to a community mental health board or its designated agency. See, Ohio Rev. Code Ch. 5122 (Baldwin 1989).

In light of this law, a probate judge's appointment to, or service on community mental health boards may be a conflict of interest and would create the appearance of impropriety. Under Canon 2 of the Code of Judicial Conduct, judges are required to conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the judiciary. In addition, Canon 3C(1) requires a judge's disqualification in cases where the judge's impartiality might reasonably be questioned.

Canon 5B allows judges to engage in certain extra-judicial activities, such as serving on boards, unless the activity would reflect adversely upon the judges' impartiality or interfere with the proper performance of judicial duties. Code of Judicial Conduct, Canon 5B. Furthermore, a judge should not serve on any board or similar organization which will be engaged in proceedings that would ordinarily come before the judge or an organization regularly engaged in adversary proceedings in any court. Code of Judicial Conduct, Canon 5B(1). The community mental health board is involved in all stages of the probate court proceedings under Ohio Rev. Code Ch. 5122. A probate judge serving on such a board would therefore reflect adversely on his or her impartiality and interfere with judicial duties.

Court referees are also required to comply with the Code of Judicial Conduct. Code of Judicial Conduct, Compliance Section. Therefore, this opinion applies to the probate court referees or anyone performing judicial functions in the probate court under Ohio Rev. Code Ch. 5122. This Board has no authority to advise you regarding any court personnel who do not perform judicial functions.

In conclusion, it is our opinion and you are so advised that probate court judges or those performing judicial functions should no longer serve on community mental health boards because of their new functions under Ohio Rev. Code Ch. 5122.

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