

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

41 SOUTH HIGH STREET-SUITE 3370, COLUMBUS, OH 43215-6105
(614) 644-5800 FAX: (614) 644-5804

OFFICE OF SECRETARY

OPINION 92-14

Issued August 14, 1992

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

[Modified by Op. 2005-2 on Feb. 4, 2005]

[Not current-subsequent rule amendments to Canons 1-6, Ohio Code of Judicial Conduct, eff. May 1, 1997.]

SYLLABUS: It is improper under Sections 102.03 (D) and (E) of the Ohio Revised Code, for referees or magistrates, who are members of a statewide association of court referees and magistrates, to solicit, accept, or use the authority of his or her office to secure financial or other support, from a law firm or from a business or an individual interested in matters before, regulated by, or doing or seeking to do business with the courts in which the referees or magistrates serve, in order to provide low registration fees, hospitality rooms, free meals, and free recreational activities for the referees, magistrates and spouses attending the annual educational meeting of the association. Such conduct is also improper under Canon 2B of the Code of Judicial Conduct and Disciplinary Rule 8-101 (A) (3) of the Code of Professional Responsibility. Further, any solicitation of funds by magistrates and referees is improper under Canon 5B (3) of the Code of Judicial Conduct unless the solicitation is to members of an educational, religious, charitable, fraternal or civic organization of which the referee or magistrate is a member.

OPINION: This opinion addresses the propriety of referees and magistrates soliciting and accepting financial and other support for an educational meeting of a statewide association of court referees and magistrates. The question is stated below.

Is it proper for referees or magistrates, who are members of a statewide association of court referees and magistrates, to solicit and accept financial and other support from law firms, businesses, or individuals to provide low registration fees, hospitality rooms with food and beverages, free meals, and free recreational activities for referees, magistrates and spouses attending an annual educational meeting of the association?

To answer the question raised, the Board must interpret the Code of Judicial Conduct, the Code of Professional Responsibility, and Ohio Ethics Law and related Statutes. This Board has authority under Section 102.08 and 102.01 (F) (2) of the Ohio Revised Code (Baldwin 1987) to render advisory opinions with regard to Ohio Ethics Law for judicial officers and employees and candidates for judicial office. The Board's authority to render advisory opinions with regard to the Code of Judicial Conduct and the Code of Professional Responsibility is found with Rule V Section 2 (C) [formerly Rule V Section 2(b)] of the Supreme Court Rules for the Government of the Bar of Ohio.

Code of Judicial Conduct and Code of Professional Responsibility

The Compliance Section of the Code of Judicial Conduct establishes that referees and magistrates are judges for purposes of the Code. There are several provisions of the Code of Judicial Conduct that are pertinent to this opinion. First, there is the Canon 5B (3) restriction on the solicitation of funds, set forth below.

A judge [referee or magistrate] should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his [her] office for that purpose, except he [she] may participate as a member in solicitations limited to members of an educational, religious, charitable, fraternal or civic organization of which he [she] is a member, and he [she] may be listed as an officer, director, or trustee of such an organization. He [she] should not be a speaker or the guest of honor at an organization's fund raising events, but he [she] may attend such events.

Second, there is the Canon 2B mandate to avoid appearances of impropriety.

A judge [referee or magistrate] should not allow his [her] family, social, or other relationships to influence his [her] judicial conduct or judgment. He [she] should not lend the prestige of his [her] office to advance the private interests of others; nor should he [she] convey or permit others to convey the impression that they are in a special position to influence him [her]. He [she] should not testify voluntarily as a character witness.

Third, there is the requirement of Disciplinary Rule 8-101 (A) (3) of the Code of Professional Responsibility that “[a] lawyer who holds public office shall not: [a]ccept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his [her] action as a public official.”

Thus, under Canon 5B (3) of the Code of Judicial Conduct it would be improper for referees and magistrates to solicit funds for the association's annual conference from non-members of the association, including law firms, businesses, or individuals who are non-members. Under Canon 2B it would be improper to accept any thing of value that would convey the impression of improper influence. Under Disciplinary Rule 8-101 (A) (3) it would be improper for a referee or magistrate to accept things of value obviously offered for the purpose of influencing his or her action as a public official. The Board views it unnecessary to define with precision a “thing of value” under the Code, since the questions raised can be more precisely answered under an interpretation of Ohio Ethics Law.

Ohio Ethics Law

As judicial officers, referees and magistrates are subject to the restrictions of Ohio Ethics Law. Ohio Ethics Law is codified in Chapter 102 of the Ohio Revised Code (Baldwin 1987 and Supp. 1991) and includes related statutes Sections 2921.42 and 2921.43 of the Ohio Revised Code (Baldwin 1992). Pertinent to this opinion are Sections 102.03 and 2921.43.

Section 102.03

(D) No public official or employee shall use or authorize the use of the authority or influence of his [her] office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him [her] with respect to his [her] duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him [her] with respect to his [her] duties.

(F) No person shall promise or give to a public official or employee anything of value that is of such a character as to manifest a substantial and improper influence upon him [her] with respect to his [her] duties.

(I) A public official or employee may accept travel, meals, and lodging or expenses or reimbursement of expenses for travel, meals, and lodging in connection with conferences, seminars, and similar events related to his official duties if the travel, meals and lodging, expenses, or reimbursement is not of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

Section 2921.43

(A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant . . . :

(1) Any compensation, other than as allowed by divisions (G), (H), and (I) of Section 102.03 of the Revised Code or other provisions of law, to perform his [her] official duties, to perform any other actor service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or public employment, or as a supplement to the public servant's public compensation;

To summarize, under Sections 102.03 (D) and (E) a referee or magistrate could not solicit, accept, or use the authority or influence of his or her office to secure "anything of value" and of "such a character as to manifest a substantial and improper influence upon him [her] with respect to his [her] duties." (Note that Section 102.03 (F) places statutory responsibilities upon the person who improperly gives a thing of value.) Section 102.03 (I) provides a limited exception allowing public officers and thus judicial officers to accept certain expenses in connection with conferences and seminars related to official duties but only if not of such a character as to manifest substantial and improper influence. Finally, Section 2921.43 (A) (1) prohibits, inter alia, a public servant from knowingly soliciting or accepting outside compensation as a supplement to a public servant's public compensation, but permits the limited exception within Section 102.03(I).

In applying these statutory provisions, this Board must determine whether the proposed support is 1) "anything of value," and 2) "of such a character as to manifest a substantial and improper influence upon him [her] with respect to his [her] official duties." "Anything of value" is defined by statute to include money, goods, chattels, any interest in realty, a promise of future employment, and every other thing of value. See Ohio Rev. Code Ann. §§102.01(G) (Baldwin 1987) and 1.03 (Baldwin 1990). "Of such a character as to manifest a substantial and improper influence" is not defined by statute, but has been interpreted by the Ohio Ethics Commission. The approach used by the Ohio Ethics Commission is that the determination of whether a gift is "substantial" depends upon the nature of the thing of value; the determination of propriety focuses on the source of the thing of value. See e.g. Ohio Ethics Commission, Op. 89-014 (1989).

According to the Ohio Ethics Commission, items or expenses that are not nominal or de minimus in value are of "substantial" value. See Ohio Ethics Commission Op. 89-014 (1989). An improper source of a thing of value is a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's agency. See Ohio Ethics Comm'n 89-013 and 89-014 (1989). Using this analysis the Ohio Ethics Commissions has consistently held that "Divisions (D) and (E) of Section 102.03 of the Revised Code prohibit a public official or employee from soliciting, accepting, or using his [her] position to secure future employment, consulting fees, honoraria, conference registration fees, travel, meal and lodging expenses, or other things of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with the public official's or employee's agency." Ohio Ethics Comm'n, Op. 89-014 (1989).

This Board's view is that low registration fees, hospitality rooms with food and beverages, free meals, and free recreational activities for referees, magistrates and spouses attending the annual educational seminar are things of value. They are more than nominal or de minimus and thus are substantial and must not come from an improper source. A law firm would be an improper source of such support to referees and magistrates since lawyers are interested in matters that come before judicial officers. An individual or a business, such as a computer services company, would be an improper source of such support if the business or individual were interested in matters before, regulated by, or doing or seeking to do business with the courts in which the referees or magistrates serve. Further, it is conceivable that low registration fees, hospitality rooms with food and beverages,

free meals, and free recreational activities for referees, magistrates and their spouses could be viewed as a supplement to the referees' and magistrates' public compensation as prohibited by Section 2921.43. However, the Board, at this time, does not express an opinion as to whether the proposed financial and other support would fall within the ambit of Section 2921.43.

In conclusion, the Board advises that it is improper under Sections 102.03 (D) and (E) of the Ohio Revised Code, for referees or magistrates, who are members of a statewide association of court referees and magistrates, to solicit, or accept, or use the authority of his or her office to secure financial or other support from a law firm or from a business or an individual interested in matters before, regulated by, or doing or seeking to do business with the courts in which the referees or magistrates serve, in order to provide low registration fees, hospitality rooms, free meals, and free recreational activities for the referees, magistrates and spouses attending the annual educational meeting of the association. The limited exception within Section 102.03 (I) allowing public officers and thus judicial officers to accept certain expenses in connection with conferences and seminars related to official duties would not apply since the support is deemed to be of such a character as to manifest substantial and improper influence. The proposed conduct is also improper under Canon 2B of the Code of Judicial Conduct and Disciplinary Rule 8-101(A) (3) of the Code of Professional Responsibility. Further, you are advised that any solicitation of funds by magistrates and referees is improper under Canon 5B (3) of the Code of Judicial Conduct unless the solicitation is to members of an educational, religious, charitable, fraternal or civic organization of which the referee or magistrate is a member.

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.