

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 94-1

Issued February 18, 1994

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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 improper under Ohio Ethics Law, for a deputy bailiff of a municipal court to privately own a business that evicts tenants for landlords for a fee, while serving the court as a deputy bailiff.

OPINION: The question presented is whether it is proper for a deputy bailiff of a municipal court to privately own a business that evicts tenants for landlords for a fee. For the reasons stated below, the Board finds it improper.

In Ohio, deputy bailiffs of municipal courts are appointed by municipal judges, the exception being one municipal court wherein the appointment is by the clerk. See Ohio Rev. Code Ann. § 1901.32 (A) (2) and (3) (Baldwin 1993). Deputy bailiffs perform services for the court and receive compensation therefore. See Ohio Rev. Code Ann. § 1901.32 (A) (2) and (6) (Baldwin 1993).

As judicial employees, deputy bailiffs are subject to the restrictions within Ohio Ethics Law for which this Board is the appropriate ethics commission to render advice. See Ohio Rev. Code Ann. §102.01 (F) (2). The relevant provisions within Ohio Ethics Law, Sections 102.03 (A) and (D) of the Ohio Revised Code (Baldwin Supp. 1993), are set forth below.

Section 102.03 (A) No present or former public official or employee shall, during his [her] public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which he [she] personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

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.

A deputy bailiff of a municipal court would serve eviction orders for a municipal court with jurisdiction in forcible entry and detainer actions. See Ohio Rev. Code Ann. § 102.01 (F) (2). Thus, the deputy bailiff would lend the force of law to an eviction. As an owner of a private eviction business, the deputy bailiff would be privately employed by a landlord to physically evict a tenant from the landlord's premises. The eviction would take place after service of the eviction orders.

It is the Board's view that a deputy bailiff's authority in serving eviction orders would enhance his or her private business of evicting tenants, violating Section 102.03 (D). Further, under Section 102.03 (A) a deputy bailiff's participation in serving an eviction order on a tenant would preclude the bailiff from accepting private employment from the landlord to evict the tenant. Thus, in answer to the question presented, the Board advises that it is improper under Ohio Ethics Law, for a deputy bailiff of a municipal court to privately own a business that evicts tenants for landlords for a fee, while serving the court as a deputy bailiff.

On a final note, the Board acknowledges that it is the judge who exercises the power of appointment. In exercising the power of appointment, a judge must abide by the Code of Judicial Conduct. Under Canon 3B(4) "[a] judge should not make unnecessary appointments. He [she] should exercise his [her] power of appointment only on the basis of merit, eliminating nepotism and favoritism. He [she] should not approve compensation of appointees beyond the fair value of services rendered."

When making appointments, a judge must also consider the restrictions within Canon 2 of the Code of Judicial Conduct.

Canon 2(A) A judge should respect and comply with the law and **should conduct himself [herself] at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.** (Emphasis added.)

Canon 2(B) A judge should not allow his 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. (Emphasis added.)

It does not promote public confidence in the fairness and impartiality of the judicial system for a court employee to officially serve eviction orders and to privately evict tenants for landlords for a fee. Thus, the Board suggests that a judge should avoid such appointments.

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.