
ISSUE

May a newly-elected judge lease office space to a lawyer as part of an agreement between the judge and the lawyer for the purchase of the judge's law practice?

ANSWER

Yes, but not for more than one year after taking office.

FACTS

A newly-elected judge will take office on August 1st. The judge is transferring the judge's law practice to a lawyer. One of the components of the purchase and sale agreement is the leasing of the judge's law office building to the lawyer.

The initial lease period begins two months prior to the judge's going on the bench and runs for 18 months, at the rate of \$600 per month. The lessor will pay taxes, insurance and major maintenance and repair. The lessee will pay all utilities and minor maintenance and repair. At the termination of the initial lease period, the lessee will have the right to renew the lease on the same terms for two (2) one-year renewal periods.

The judge-elect asks whether the proposed lease arrangement is in the nature of "frequent transactions or continuing business relationships" proscribed by SCR 60.05(4).

DISCUSSION

The Committee concludes that the issue presented involves the provisions of SCR 60.02, 60.03(1), 60.05(1), 60.05(4)(a)1.b., 60.05(4)(a)2. and 60.05(4)(d).

A. SCR 60.02

SCR 60.02 states:

A judge shall uphold the integrity and independence of the judiciary.

The rule also provides:

. . . A judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. . . .

The comment to this rule notes that public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. A judge must maintain high standards of conduct in all of the judge's activities. The proposed lease agreement raises the question of whether the judge can remain impartial in cases where the lawyer-tenant represents one of the parties.

B. SCR 60.03

SCR 60.03 states:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activity.

Subsection (1) of this Rule provides:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes confidence in the integrity and impartiality of the judiciary.

The relevant factors in this case are the degree to which the personal conduct is public or private and the degree to which the conduct is a protected individual right. The lease agreement involves a private business relationship. At the same time, to the degree to which the lease agreement is known within the community at large it tends to become public conduct on the part of the judge. The question which may arise in the public mind is the extent to which the judge-lawyer business relationship affects the judge's ability to be fair and impartial. The public is not always aware that judges must recuse themselves from cases involving those in a business relationship with the judge. Although having such a lease agreement is a protected individual right, the agreement may violate the prohibition against the appearance of impropriety.

C. SCR 60.05

SCR 60.05 states:

A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Subsection (1) of the Rule provides:

A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:

- (a) Cast reasonable doubt on the judge's capacity to act impartially as a judge.
- (b) Demean the judicial office.
- (c) Interfere with the proper performance of judicial duties.

The Committee concludes that although the proposed lease agreement does not automatically violate subsections (a) and (b), there is the probability, especially in a rural county, that the judge would find it necessary to recuse himself/herself from cases involving the lawyer, thus interfering with the proper performance of judicial duty.

SCR 60.05(4)(a)1.b. states:

A judge may not engage in financial or business dealings that could meet any of the following conditions:

Involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

The Comment notes that this rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for recusal or disqualification.

The proposed lease clearly would involve the judge in a continuous business relationship with the lawyer. It is likely the judge would recuse himself/herself from cases involving the lawyer, a circumstance which would impact other judges in the county or the district and greatly increase the administrative activity in processing that lawyer's cases. The potential for recusal or disqualification would be maximized rather than minimized as to that lawyer.

The request for a formal opinion characterizes the lease as relatively short-term and as part of the transitional process in the sale of the judge's law practice. The Committee concludes that the lease is too long, too enduring, and, as proposed, a violation of SCR 60.05(4)(a)1.b. The fact that the lease provides for automatic renewal at a fixed rental rate

does not obviate the ethical issues. It also is irrelevant that the lease is part of the transitional process and that the rental amount is not tied to the lawyer's gross billings or net profits.

SCR 60.05(4)(a)2. states:

A judge shall comply with sub. (4)(a)1 as soon as reasonably possible and, in any event within one year of the applicability of this chapter to the judge.

This subsection requires that the judge terminate the lease agreement as soon as possible, and certainly within one year of August 1, 1997. The Preamble to the Code of Judicial Conduct provides that when the text of a rule uses "shall" it is intended to impose binding obligations, the violation of which can result in disciplinary action. Therefore, the judge is obligated to discontinue the landlord-tenant relationship with the lawyer by July 31, 1998.

SCR 60.05(4)(d) states:

A judge shall manage the judge's investments and other financial interests so as to minimize the number of cases in which the judge's recusal or disqualification is required. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

This rule appears to require termination of the landlord-tenant relationship as soon as possible, barring serious financial detriment to the judge. The facts stated in the request for a formal opinion do not claim or support a finding of serious financial detriment absent the lease agreement as proposed.

CONCLUSION

The Committee concludes that the proposed lease agreement violates SCR 60.05(4)(a)2 because it contemplates a continuing business relationship with a lawyer likely to come before the court on which the judge serves. The Code requires the judge to terminate the landlord-tenant relationship within one year of the Code's applicability to the judge, namely, August 1, 1997, the date the judge assumes office. The Code also requires divestment from the landlord-tenant relationship as soon as possible, absent serious financial detriment to the judge. Compliance with the requirements of SCR 60.05 will

enable the judge to avoid the appearance of impropriety and uphold the integrity and independence of the judiciary.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60--Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 97-4 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this ____ day of _____, 1997.

Thomas H. Barland
Chair