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## ISSUE

May a circuit court judge serve on the editorial board of Wisconsin Opinions, a weekly newspaper devoted to the publication of the appellate opinions of the Wisconsin Supreme Court, the Wisconsin Court of Appeals, United States District Court, United States Seventh Circuit, Wisconsin trial courts and news of interest to the bench and bar of Wisconsin?

## ANSWER

Yes, as long as the judge serves anonymously after the initial introduction of editorial board members to Wisconsin Opinion readers.

## FACTS

A circuit court judge has been invited to serve on the Editorial Board of Wisconsin Opinions. Wisconsin Opinions is a private, for-profit enterprise. The members of the board will consist of attorneys and legal professionals. The board will have three tasks: 1) to offer critiques of recent stories and general feedback about the publication; 2) to offer (non-credited) suggestions for stories in progress; and, 3) to occasionally take positions on issues of law and the legal profession for the editorial page. The judge would be exempted from the third task, which non-participation would be prominently noted.

Wisconsin Opinions intends to run a photo of each board member--once only, and not as an advertisement--to introduce the board to readers of the newspaper. The judge would be identified as a judge, but would not be pictured in a robe.

## DISCUSSION

The committee concludes that the issue presented involves the provisions of SCR 60.03(1) & (2) and SCR 60.05(1), (2) & (3)(c).

**A. *SCR 60.05(2) & (3)(c)***

SCR 60.05(2) states:

A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this chapter.

The comment to SCR 60.05(2) states:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, . . . To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law.

SCR 60.05(3)(c) states:

A judge may serve as an officer, director, trustee or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice . . . subject to the following limitations and the other requirements of this chapter: . . .

The Code of Judicial Conduct permits judges to engage in extra-judicial activities which focus on law and justice. As noted in the Comment to SCR 60.05(2), the code not only permits but encourages judges to use their learning and expertise to improve the law, the legal system and the administration of justice. The judge's membership on the editorial board would place the judge in a position to fulfill that role. Although Wisconsin Opinions is a private, for-profit enterprise, the newspaper devotes itself to the dissemination of court decisions and opinions and to the publication of news of interest to judges and attorneys in Wisconsin. The judge's participation in two of the editorial board's tasks is an opportunity to improve the law, the legal system and the administration of justice.

The judge will critique stories, offer feedback and make suggestions about stories in progress. The judge serves as a nonlegal advisor to Wisconsin Opinions, as contemplated within the meaning of SCR 60.05(3)(c). The judge's role is limited to the editorial policy regarding topics in current or future issues of the newspaper. The judge will not be involved in writing, commenting upon or taking positions on issues of law or procedure. Although Wisconsin Opinions does not describe itself as an organization "devoted" to the improvement of the law, the legal system and the administration of justice, the judge's participation as a nonlegal advisor, as described in the first two tasks of the editorial board,

will assist Wisconsin Opinions in its presentation of timely topics and news to judges and attorneys in Wisconsin. Publication of court opinions and reporting of news items to judges and attorneys serve to improve the legal system.

**B. SCR 60.03(1)&(2) and SCR 60.05(1)(a)**

SCR 60.03(1) states:

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

SCR 60.03(2) states, in part:

A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others or convey or permit others to convey the impression that they are in a special position to influence the judge.

SCR 60.05(1)(a) states:

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.

As noted above in SCR 60.05(2) and (3)(c), a judge's participation in extra-judicial activity is "subject to the requirements of this chapter." A judge has an absolute duty to maintain the dignity, integrity and impartiality of the judicial office. A judge may not allow any organization to which the judge provides nonlegal advice to use the prestige of judicial office to advance private interests. The judge's service on the Editorial Board may not be used to enhance the prestige or advance the private interests of Wisconsin Opinions. For example, the judge's participation as an editorial board member may not be used to attract new subscribers to Wisconsin Opinions.

The committee concludes that the judge may not be identified after the initial announcement and introduction of the Editorial Board. Although photographs of the judge and of other board members will appear with the announcement, the judge will not be photographed in a robe. In addition, Wisconsin Opinions will publish a one-time disclaimer to advise readers that the judge does not participate in determining or formulating the

publication's position on legal or other issues stated on the editorial page. Wisconsin Opinions must publish the disclaimer with the initial announcement of board members, but not thereafter so as to avoid emphasizing the judge's membership on the Editorial Board.

Finally, Wisconsin Opinions may not identify the judge in any repeated or routine listing of Editorial Board members, even if other board members are identified as attorneys or other professionals. The committee concludes that limiting the publication of the judge's participation on the Editorial Board is necessary to avoid the possibility that Wisconsin Opinion readers may believe that the judge is lending the prestige of the judicial office to news articles or editorial columns appearing in the newspaper.

A judge's participation in any extra-judicial activity must not cast reasonable doubt on the judge's capacity to act impartially. Although service on an editorial board may seem to suggest the absence of impartiality, the judge will not participate in the board's task of occasionally taking positions on issues of law and the legal profession. In addition, the judge's non-participation in that task will be prominently noted, but only once. Therefore, the judge's participation on the editorial board will not cast reasonable doubt on the judge's capacity to act impartially.

## CONCLUSION

The committee concludes that a circuit court judge may serve as a member of the editorial board of Wisconsin Opinions and may serve as a nonlegal advisor, as long as the judge's identity as a judge is not used to enhance the private interests of Wisconsin Opinions. The judge may be introduced, along with other board members, in the announcement of the creation of the editorial board. The introduction may include a photograph of the judge, but not in a robe. Thereafter, the judge's service as an editorial board member must not be acknowledged.

## 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. 99-3 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin, this 14th day of April, 1999.

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Thomas H. Barland  
Chair