
ISSUE

May a part-time municipal judge provide services for hire in a private business as a neutral third person?¹

ANSWER

Yes.

FACTS

A part-time municipal judge wishes to provide services for hire as a neutral third person.

DISCUSSION

The issue presented involves the provisions of SCR 60.01(8), SCR 60.05(6) and SCR 60.07(2).

SCR 60.01(8) defines a "judge" as including a municipal judge.

SCR 60.05(6) states that "A judge may not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless otherwise authorized by law."

¹ The judge's inquiry in this case uses the term "arbitrator/mediator," not "neutral third person." In Opinion 98-6, a reserve judge made a similar inquiry also using the term "arbitrator/mediator." In that case the Committee noted that although SCR 60.05(6) speaks of a "mediator" or "arbitrator," the practice of alternative dispute resolution had expanded to include many other processes analogous to mediation and arbitration. The Committee also noted that § 802.12, which addresses alternative dispute resolution, uses the phrase "neutral third person" when referring to those who provide alternative dispute resolution services. Therefore, the Committee adopted the statutory language of "neutral third person" when referring to those who provide mediation, arbitration, or other settlement services. The Committee adheres to that designation in this and future cases.

However SCR 60.07(2) states that SCR 60.05(6) does not apply to a part-time municipal judge. Therefore, a part-time municipal judge is authorized to serve as a neutral third person.

CONCLUSION

The Committee concludes that a part-time municipal judge may serve for hire as a neutral third person.

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. 98-11 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 23rd day of September, 1998.

Thomas H. Barland
Chair