

ISSUE

May a judge testify at a Canadian administrative tribunal hearing on behalf of an interest group which seeks a binding administrative rule declaring that the Canadian Human Rights Act applies to the Canadian judiciary?

ANSWER

Yes.

FACTS

A Canadian lawyer who represents certain disability groups in Canada has contacted the Wisconsin judge who has a disability. The lawyer has advised that the Canadian judiciary believes that it is not bound by the Canadian Human Rights Act, which requires that people with disabilities be accommodated when seeking or using governmental services. The interest group is seeking the promulgation of an administrative rule declaring that the Canadian judiciary is bound by the Canadian Human Rights Act. To that end, the group took the matter before the Canadian Human Rights Commission, which has directed that the issue be submitted to a tribunal for an administrative hearing.

The lawyer has asked the judge to testify as an expert witness before the tribunal in support of the proposed administrative rule. The judge is the former chair of the American Bar Association's Commission on Mental and Physical Disability Law and has taught extensively on a national level about the workings of the Americans With Disabilities Act (ADA) in the United States. The judge uses modern technology in his judicial work to meet his special needs. The judge anticipates that his testimony before the tribunal would address both of these experiences.

DISCUSSION

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

SCR 60.03 states:

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

Subsection (2) states in relevant 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.

While the judge's proposed testimony would support the cause of the interest group, the committee concludes that the judge's appearance before the administrative tribunal would not improperly lend the prestige of the judicial office to others within the meaning of SCR 60.03(2). The judge is proposed as a witness not only because he is a judge, but also because he uses modern technology in his judicial work to meet his needs and because he is an expert concerning the ADA. As such, the judge falls into a narrow and limited category of potential expert witnesses who can educate the tribunal on these topics.

SCR 60.05(2) states:

(2) Avocational Activities. 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.

On the same theme, SCR 60.05(3)(a), provides in relevant part:

A judge may not appear at a public hearing before, or otherwise consult with, an executive or legislative body of official except on matters concerning the law, the legal system or the administration of justice....

As noted, the purpose of the judge's testimony is to educate the foreign tribunal about the workings of the ADA in this country and the benefits that modern technology brings to persons with disabilities. Such testimony would concern "the law, the legal system" and "the administration of justice" as permitted by SCR 60.05(2) and (3)(a).

Finally, the committee does not see the judge's proposed testimony as barred by the considerations set out in SCR 60.05(1) which state:

(1) Extra-judicial Activities in General. 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.

Because the purpose of the judge's proposed testimony is educational, it does not call into question the impartiality of the judge nor demean the judicial office. Nor does it appear that the judge's role as a witness would interfere with the proper performance of the judge's duties.

CONCLUSION

Because the purpose of the judge's proposed testimony is educational, thereby serving the interests of "the law, the legal system, and the administration of justice" as contemplated by SCR 60.05(2) and (3)(a), the judge's proposed appearance before the foreign tribunal does not improperly lend the prestige of the judicial office to others under SCR 60.03(2) nor violate any of the considerations set out in SCR 60.05(1).

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 purpose 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. 00-4 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin, this 31st day of July, 2001.

Thomas H. Barland
Chair