
ISSUE

May a judge serve as a member of the board of directors of a state university extension foundation committee whose purpose is to promote development of the university's county center and to improve the quality of student life at the center?

ANSWER

Yes, subject to the following limitations: (1) the judge may not personally participate in the solicitation of funds or other fund-raising activities; (2) the judge's judicial designation may not be listed on the letterhead of the foundation's fund-raising letters unless comparable designations are listed for other directors; and (3) the judge's name may not be listed on the letterhead of any fund-raising committee acting on behalf of the foundation.

FACTS

The judge has been nominated to be a member of the board of directors for an incorporated state university extension center foundation. The foundation is a nonprofit corporation which is exempt from income taxes pursuant to I.R.C. § 501(3)(c).

The foundation's purpose is to promote the welfare of the university center by:

1. encouraging student attendance;
2. offering assistance in student campus-life projects;
3. encouraging the enlargement of existing facilities and the acquisition of additional facilities commensurate with the center's needs and growth; and
4. inaugurating and supporting scholarship and loan programs.

The board of directors consists of fifteen members. Each director serves a three-year term. The board meets quarterly, usually in the late afternoon. A meeting generally lasts for 1 1/2 hours.

The university center facilities are owned by the county and city in which the center is located. The county which the judge serves is not the county in which the center is located. Although the board is consulted regarding the enlargement of existing facilities and the acquisition of additional facilities, the ultimate decision on these matters

is reserved to the county and city. The board does not have the power to make any political decisions.

In the letter requesting an advisory opinion, the judge has recognized the duty to disqualify should any litigation involving the foundation or the center be assigned to the judge. In addition, the judge has recognized the duty to refrain from fund-raising activity.

DISCUSSION

The Committee concludes that the issue presented involves SCR 60.05(1), (2) & (3).

A. *SCR 60.05(1)*.

SCR 60.05(1) provides:

- (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.

The Committee concludes that the judge's service as a member of the board of directors of the university center foundation does not violate SCR 60.05(1). The Comment to this section states that, "Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives."

The board of director's position obviously does not demean the judicial office. Nor do the time demands and the scheduling of the meetings appear to interfere with the proper performance of the judge's duties. As to impartiality, it is unlikely that the foundation would be involved in litigation. While it is more likely that the university center could be involved in litigation, the venue would likely be the county where the center is located, not the different county where the judge presides. Finally, if the foundation or the center were involved in litigation in the county where the judge presides, the judge has recognized the

duty to disqualify. Therefore, the position does not cast reasonable doubt on the judge's capacity to act impartially.

B. SCR 60.05(2).

SCR 60.05(2) provides:

- (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.* [Emphasis added.]

The Committee concludes that the judge's service as a member of the board of directors of the university center foundation does not violate SCR 60.05(2). This provision expressly allows a judge to participate in extra-judicial activities concerning nonlegal subjects. The Committee notes that the conduct permitted under this provision is otherwise "subject to the requirements of this chapter." However, the Committee sees no other provisions of the Code of Judicial Conduct which bar the judge's proposed conduct.

C. SCR 60.05(3).

SCR 60.05(3), in relevant part, provides:

- (3) **Governmental, Civic or Charitable Activities.**

....

- (b) A judge may not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. *A judge may represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities and may serve on a governmental or private committee, commission or board concerned with historical, educational or cultural activities....*

(c) *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 or of a nonprofit educational, religious, charitable fraternal, sororal or civic organization, subject to the following limitations and the other requirements of this chapter:*

1. A judge may not serve as an officer, director, trustee or nonlegal advisor if it is likely that organization will do any of the following:
 - a. Engage in proceedings that would ordinarily come before the judge.
 - b. Engage frequently in adversary proceedings in the court of which the judge is a member....
2. A judge, in any capacity:
 - a. May assist the organization in planning fund-raising activities and may participate in the management and investment of the organization's funds *but may not personally participate in the solicitation of funds or other fund-raising activities,....*
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 - d. *May not use or permit the use of the prestige of the judicial office for fund raising or membership solicitation.* [Emphasis added.]

The Committee concludes that the judge's service as a member of the board of directors of the university center foundation does not violate SCR 60.05(3). As with SCR 60.05(2) which permits a judge to participate in activities concerning nonlegal subjects,

subsections (3)(b) and (c) respectively allow a judge to: (1) serve on a governmental or private committee or board concerned with educational activities; and (2) serve as a director of a nonprofit educational organization.

Like SCR 60.05(2), subsection (3)(c) also recites a general qualifier that the permitted judicial conduct is otherwise "subject to the...other requirements of this chapter." Here again, the Committee sees no other provisions of the Code of Judicial Conduct which bar the judge's proposed conduct.

In addition to this general qualifier, subsections (3)(c) 1. & 2. set out specific limitations. Subsection (3)(c)1. bars a judge from serving as a director if it is likely that the organization: (1) engages in proceedings which would ordinarily come before the judge; or (2) frequently engages in adversary proceedings in the court of which the judge is a member. However, as the Committee has already explained when speaking to SCR 60.05(1), the likelihood of such litigation coming before the judge is remote. And, in any event, the judge has already recognized the duty to disqualify if such litigation should occur. Therefore, the Committee concludes that the provisions of this subsection do not bar the judge from serving as a director.

Subsection (3)(c)2.a., while allowing a judge to assist in planning fund-raising activities and to participate in the management and investment of the organization's funds, bars a judge from personally participating in the solicitation of funds or other fund-raising activities. In addition, subsection (3)(c)2.d. bars the use of the prestige of the judicial office for fund-raising purposes. It is important to note that these provisions do not bar the judge from holding the director's position if the organization engages in fund-raising. Rather, the provisions bar the judge from soliciting funds. Here, the judge has recognized the obligation to obey this provision of the Code. Assuming that the judge will so comply, the Committee concludes that the provisions of this subsection do not bar the judge from serving as a director.

Even though a judge may not personally engage in fund-raising, the Comment to subsection (3)(c)2.d. recites that an organization's fund-raising letter may include the name of the judge and the judge's name and office or other position *in the organization*. Only if comparable designations are listed for other persons may the judge's judicial designation be listed. Some jurisdictions do not permit even this latter practice. *See* JEFFREY M. SHAMAN ET AL., JUDICIAL CONDUCT AND ETHICS, § 9.07 at 292-93 (2d ed.

1995). Nonetheless, the Committee concludes that the principle stated in the Comment to this subsection of the Code represents an appropriate standard of judicial conduct for Wisconsin judges in a case such as this. The judge is therefore cautioned to assure that any fund-raising letters which use the foundation's letterhead comport with the Comment to this subsection.

Finally, the Committee notes that the Comment to subsection (3)(c)2.d. refers only to fund-raising efforts which use the organization's letterhead. It does not refer to other fund-raising efforts which do not use the organization's letterhead, but instead recite the members of the organization's fund-raising committee. This latter situation is governed by subsection (3)(c)3.d. which, as the Committee has already noted, permits a judge to engage in limited fund-raising activities, but bars a judge from personal solicitation of funds. Therefore, under no circumstances may the judge's name be listed on the letterhead of a fund-raising committee's solicitation letter.

CONCLUSION

The Committee concludes that the judge may serve as a member of the board of directors of the university foundation committee so long as the judge does not personally solicit funds on behalf of the foundation. The Committee further concludes that the foundation's fund-raising letters may not list the judge's judicial designation unless comparable designations for other directors are also listed. However, the judge's name may not be listed on the letterhead of any fund-raising committee acting on behalf of the foundation.

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. 98-4 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 19th day of February, 1998.

Thomas H. Barland, Chair