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**ISSUE**

May a judge sell his photographic art work for profit at a public event?

**ANSWER**

Yes.

**FACTS**

The judge and his wife have rented a booth at an ethnic festival at which they intend to sell photographs taken by the judge during a recent trip to the Orient. The judge has signed the prints under a pseudonym which uses his first name (or initial thereof) and his middle name. The judge and his wife have rented the booth and obtained a seller's permit under a business name which uses the judge's middle name followed by the phrase "Fine Art Photographs." In no instance does the judge use his last name or his judicial title.

**DISCUSSION**

The Committee concludes that the issue presented implicates the provisions of SCR 60.03 governing conduct which is improper or which creates the appearance of impropriety and SCR 60.05 governing a judge's extra-judicial activities.

**A. SCR 60.03**

SCR 60.03 states:

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

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 Committee concludes that the proposed activity does not violate this Rule. The Comment to this Rule recites certain factors which bear upon the question. The relevant factors in this case are whether the conduct carries the potential to harm or offend others, suggests bias or prejudice on the part of the judge, or indicates any disrespect by the judge for the public of the judicial/legal system. None of these concerns are raised by the proposed activity. To the contrary, the proposed activity is commendable, constructive and positive.

**B. 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 this Rule 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 proposed activity does not violate this subsection of SCR 60.05. The festival dates encompass a weekend which do not implicate a judge's normal and expected working hours. The proposed activity, while commercial, is also artistic in character. As such, it does not demean the judicial office. The activity is also unrelated to the judicial office. As such, it does not cast any reasonable doubt on the judge's ability to act impartially in the judicial role.

The Committee also observes that the Comment to SCR 60.05(1) provides, in part, "a judge should not become isolated from the community in which the judge lives." The proposed activity involves the judge in a worthwhile community activity which does not impact upon or prejudice the judge's judicial position.

Subsection (4) of this Rule pertains to a judge's "Financial Activities." It states, in part:

- (c) 1. Except as provided in par. 2, a judge may serve as an officer, director, manager, general partner, advisor or employe of a business entity if that service does not conflict with the judge's judicial duties, create the appearance of impropriety, or otherwise violate any provision of this chapter.
2. A judge may not serve as an officer, director, manager, general partner, advisor or employe of any business entity affected with a public interest, including a financial institution, insurance company, and public utility, and may not participate in or permit the judge's name to be used in connection with any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lends the power or prestige of office to promote a business or commercial venture.

The Committee concludes that the proposed activity does not violate this further subsection of SCR 60.05(4)(c). These provisions expressly allow a judge to engage in remunerative activity subject to certain restrictions which do not apply in this case. And, assuming that the proposed activity constitutes a business enterprise, the business is held by the judge or a member of his family.

Subsection (4)(a) of this Rule also provides in part:

1. A judge may not engage in financial or business dealings that could meet any of the following conditions:
  - a. Reasonably be perceived to exploit the judge's judicial position.
  - b. 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 Committee concludes that the proposed activity does not violate this further subsection of SCR 60.05(4). The activity is aimed at the public generally, not those associated with the judge's professional life or those likely to come before the court on judicial business. Moreover, the activity is conducted under a pseudonym and business name which does not reveal the identity of the judge or his role as a judge. Therefore, the judge is not using the prestige of the judicial office to enhance the commercial activity.

## CONCLUSION

The commission concludes that the proposed activity does not violate SCR 60.03, 60.05(1) or 60.05(4).

## 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. 97-1R (revised) issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this \_\_\_\_ day of \_\_\_\_\_, 1997. This revised opinion is the same as Opinion No. 97-1 except for more specific citations to the Code and a corrected quote of sec. 60.05(4)(c) of the Code which was amended by order of the Supreme Court dated December 20, 1996.

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Thomas H. Barland  
Chair