

ISSUE

May a judge accept an appointment to a military service academy panel?

ANSWER

No.

FACTS

A Circuit Court judge has been asked by a congressman to serve on a panel to review applications of citizens wanting to attend a military academy (such as West Point) and to make a recommendation as to which candidate is “the most qualified to receive appointment to a military service academy.” Expenses of panel members may be paid, but they are given no other remuneration.

DISCUSSION

The judge requesting this opinion cited to **SCR 60.50(3)(b)**, stating that he believed the key issue was whether the panel is concerned with “issues of fact or policy” under that rule. **SCR 60.50(3)(b)** provides:

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. A judge may serve in any branch of military reserves and be called to duty in the active military.

In addition, the COMMENT to this section states, *inter alia*:

A judge is prohibited from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by par. (c). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

The committee concludes that a military service academy panel is, in fact, a governmental “committee or commission or other governmental position” under **SCR 60.50(1)(b)**. It is convened by a member of Congress, and it works toward a governmental goal of populating our government’s service academies with qualified people. The panel “is concerned with issues of fact”, (i.e. which candidate is the most qualified to receive appointment to the military service

academy) and those factual issues are clearly unrelated to “the improvement of the law, the legal system or the administration of justice.”

The advisory committee also considered **SCR 60.05(3)(a)** to be relevant to the question before it. That subsection provides:

A judge may not appear at a public hearing before or otherwise consult with an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge’s interests.

The committee concludes that **SCR 60.05(3)(a)** prohibits membership on a military service academy panel because panel service comes at the behest of a congressperson, (a legislative official), and involves a judge making a recommendation to that congressperson, on a matter that clearly is unrelated to “the law, the legal system or the administration of justice.” As such, it falls within the prohibition against consulting with a legislative official on a matter outside of law and the legal system.

CONCLUSION

Because reviewing candidates’ submissions and making recommendations necessarily requires factual determinations on matters other than law or the legal system, participation by a judge on a military service academy panel, which is a governmental committee, is not permitted under sec. **60.05(3)(b)** of the Wisconsin Code of Judicial Conduct. Because performing on such a panel is a form of consultation with a legislative official, on a matter unrelated to law or the legal system, it is also prohibited by sec. **60.05(3)(a)** of the Code. The conclusion expressed here was based on a 6 – 1 decision of the participating committee members.

APPLICABILITY

This opinion is advisory only. It is based on the specific facts and a question submitted by the petitioner to the Judicial Conduct Advisory Committee and is limited to the questions arising under the Supreme Court Rules, Chapter 60, Code of Judicial Conduct. This opinion is not binding on the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial disciplinary responsibilities. This opinion does not purport to address provisions of the Code of Ethics for public officials and employees, Subchapter III of Chapter 19 of the statutes.

I hereby certify that this is a revised formal opinion, No. **11-2R**, issued by the Judicial Conduct Advisory Committee for the State of Wisconsin, this 29th day of November, 2011. Although we reach the same result as **Opinion 11-2**, we withdraw that part of our earlier reasoning in which we concluded that the committee’s work is not “concerned with...educational...activities.”

Hon. Kitty K. Brennan,
Chair
November 29, 2011

