
ISSUE

May a reserve judge serve as president of a civic, non-profit organization, a substantial part of whose mission is to advocate social goals through litigation and legislative action?

ANSWER

No.

FACTS

A reserve judge wishes to be a candidate for president of a civic, non-profit organization. The organization is a local branch of a national organization which advocates certain social goals, and actively pursues them using a variety of means, including public protest and civil disobedience, legislative change, and litigation on both national and local levels. Legal assistance is provided to local branches by the national organization. Officers of the organization may serve as spokespersons in seeking to advance the organization's interests. The president of the local branch serves a two-year term, is elected by local members, and receives no compensation. The reserve judge acknowledges that recusal would be necessary in any case involving the civic organization. Reserve judges do not have to accept assignments, and there are other reserve or other judges available to handle such litigation.

DISCUSSION

The Committee concludes that the issue presented involves provisions of SCR 60.03(2), 60.04(4), 60.05(1), 60.05(3), and 60.07.

A. SCR 60.07

Pursuant to SCR 60.07(2), reserve judges are not required to comply with SCR 60.05(3)(c)1.b., 2.a., and 2.c. These exemptions allow reserve judges to participate in some activities regarding service for private organizations to a greater degree than full-time judges. Examples of such service permitted by a reserve judge, but not by a full-time judge, include personal solicitation of funds for and membership in an organization. However, pursuant to SCR 60.07(1), all judges must comply with the remainder of the code. Therefore, reserve judges are still subject to SCR 60.03, 60.05(3)(c)1.a. and 60.05(3)(c)2.d.

B. SCR 60.03(2)

Reserve judges are not exempt from SCR 60.03, which states:

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

In addition, SCR 60.03(2) states:

A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others . . .

To satisfy this provision of the Code while serving as president of a civic organization, a judge must not be identified as a judge when speaking for the organization. This may be difficult, particularly in public appearances, since the news media often identify the occupation of newsworthy individuals. The president of an active, advocacy-oriented civic organization is frequently in the public eye, often by design. For example, it is likely that the organization's president would be expected to lead any campaign on issues of concern to the organization. Further, individuals within the organization could inadvertently use the judge's title in discussing or publicizing the work of their organization's leader. Such use of a judge's title in connection with his or her work in this civic organization could constitute using the prestige of judicial office to advance the interests of the organization, which is prohibited by SCR 60.03. The committee concludes that such a violation is highly probable in this case.

C. SCR 60.05

Reserve judges are not exempt from all the provisions of SCR 60.05. That section is entitled: "A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations."

SCR 60.05(3)(c) permits all judges, not just reserve judges, to serve as an officer of a civic organization, "subject to the following limitations and the other requirements of this chapter." Limitations within SCR 60.05(3)(c)2.d are applicable to all judges. As stated above, reserve judges are not specifically exempt from this provision and must comply with it as well. SCR 60.05(3)(c)2.d. states: a judge "may not use or permit the use of the prestige of judicial office for fundraising or membership solicitation." The comments to that section make clear that:

A judge may be a speaker or guest of honor at an organization's fundraising event provided there is no advertising of the judge as speaker or guest of honor in order or encourage people to attend and make contributions and provided that any contributions at the event are made prior to the judge's speech or presentation as guest of honor.

And,

Use of an organization letterhead for fund-raising or membership solicitation does not violate subd. 2 provided the letterhead lists only the judge's name and office or other position in the organization and, if comparable designations are listed for other persons, the judge's judicial designation.

We conclude the following by comparing these permissive and restrictive sections of the Code. A reserve judge may serve as president of a civic, nonprofit organization and may participate in its fund-raising and membership solicitation, subject to some limitations. When engaged in these activities, the reserve judge may not lend the prestige of judicial office to the activities. Given the public nature of the role of president of this organization and the fact that fundraising and membership solicitation are frequently an important part of the role of president, it is unlikely that a reserve judge could avoid lending the prestige of office to such activities. In sum, we conclude there would be a significant likelihood of violation of SCR 60.05(3)(c)2.d.

D. SCR 60.04(4) and 60.05(1)(a) and (c)

Reserve judges are subject to SCR 60.04(4), and 60.05(1)(a) and (c). These provisions of the Code involve the issues of impartiality and the proper performance of judicial duties.

SCR 60.04(4) provides for mandatory recusal or waiver in a proceeding where the judge is an officer or director of an organization which is a party to the litigation and

. . . when reasonable, well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances the judge knows or reasonably should know would reasonably question the judge's ability to be impartial.

SCR 60.05(1)(a) provides that:

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.

.....

(c) Interfere with the proper performance of judicial duties.

These provisions of SCR 60.05 are mandatory and not waivable by the litigants.

The reserve judge acknowledges that recusal is required whenever the organization is a party to the litigation. However, that does not end the inquiry. SCR 60.04(4) and 60.05(1)(a) and (c) may also be contravened when the organization is not a litigant in the case. The civic organization at issue advocates specific social goals, is frequently involved as a litigant, and frequently pursues legislative changes. In addition, the organization is very public in its activities. The president is inevitably identified with these goals and often serves as their advocate. Therefore, the judge could not be reasonably perceived as impartial in cases in which the organization is a litigant. The judge could also be perceived as not impartial in cases in

which the social goals of the organization are in dispute or substantially a part of the litigation. Taken together, these provisions require that a judge exercise recusal whenever the organization is a litigant and whenever the organization's social goals are a significant issue in a case. A reserve judge serving as president of the organization in question would have much greater difficulty identifying in a timely manner what cases would require recusal. Given this difficulty, a reserve judge could discover the need for recusal only after the litigation was in progress. This could interfere with the proper performance of judicial duties by creating costly delays. The judge must take care to exercise recusal, obtain appropriately available waivers, and avoid delays, or risk contravening the Code.

CONCLUSION

The Committee concludes that a reserve judge may not serve as president of a civic, non-profit organization, a substantial part of whose mission is to advocate social goals through litigation and legislative action. It appears likely that the prestige of judicial office would be used (even if inadvertently) to advance the interests of the organization, particularly in the areas of advocacy and fund-raising. Further, service as the organization's president could compromise the perception that the judge is impartial, and has some potential to interfere with the proper performance of judicial duties.

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. 00-5 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this _____ day of January, 2002.

Thomas H. Barland
Chair