

**JUDICIAL ETHICS ADVISORY COMMITTEE
OF THE
STATE OF DELAWARE**

The Hon. Joseph R. Slights, III, Chair
The Hon. Mardi F. Pyott, Vice Chair
The Hon. Kenneth S. Clark, Jr., Secretary
The Hon. James T. Vaughn, Jr.
The Hon. Sheila G. Blakely
The Hon. Donald F. Parsons, Jr.
The Hon. Robert B. Coonin

JEAC 2004-5

December 16, 2004

Dear:

You have requested an advisory opinion from the Judicial Ethics Advisory Committee (the "Committee") regarding whether you may accept employment as a basketball referee for the Catholic Youth Ministries of the Catholic Diocese of Wilmington, a non-profit organization. You have advised the Committee that referees are paid a nominal fee of approximately \$12 per game for their services.

I. THE COMMITTEE'S ADVICE

The Committee believes that you may accept employment as a basketball referee for a non-profit organization. Further, you may receive reasonable compensation so long as the amount does not exceed what others receive for the same employment. Any such compensation earned must be reported in accordance with Canon 6(C) and rules adopted thereunder.

II. THE APPLICABLE CANNONS OF JUDICIAL CONDUCT

Canons 5(B) and 5(C) of the Delaware Judges' Code of Conduct provide:

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization....

C. Financial Activities. (1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit or demean the judicial position, or involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves. (2) Subject to the requirements of subsection (1), a judge...should not serve as an...employee of any business other than a business closely held and controlled by members of the judge's family.

Canons 6, 6(A), and 6(C) provide as follows:

A judge should regularly file reports of compensation received for law-related and extra-judicial activities. A judge may receive compensation and reimbursement of expenses for the law-related and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety...

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

C. Public Reports. A judge shall make financial disclosures as required by the Supreme Court.

III. ANALYSIS

Your situation has not previously been addressed by an advisory opinion in Delaware. Opinions on the subject, however, have been published in Ohio and Alabama. The Ohio Commissioners advised that participation as a soccer referee for a non-profit soccer association was proper.¹ Likewise, the Alabama Commission advised that a district judge may serve as a referee for sports activities with or without remuneration as long as the judge may do so without violating Canon 3 (the judicial activities of a judge take precedence over her other activities) and Canon 5(C).²

Acting as a referee for youth sports does not implicate improper financial or business activities. Under Canon 5(C)(1) and (2), a judge may not engage in “financial and business dealings that tend to reflect adversely on the judge’s impartiality” or dealings that “involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves.” In general, it seems unlikely that your involvement as a referee would

¹ *Ohio Advisory Opinion 2003-6* (2003).

² *Alabama Advisory Opinion 80-79* (1980).

reflect adversely on your impartiality or involve you in relationships with persons likely to come before your court.

Under Canon 5(C)(3), a judge should not serve as an officer, director, manager, general partner, advisor, or employee of any business entity, except for closely-held, family-owned businesses. This rule is inapplicable because the mere presence of compensation does not necessarily make a judge an “employee” of a business.³ In line with the Ohio Board’s opinion, the Committee does not consider serving as a basketball referee for a non-profit organization to be serving as an employee of a business entity.⁴

We consider refereeing youth basketball to be more akin to charitable or civic activity because of both the nature of the activity and the nominal compensation. Canon 5(B) permits participation as an officer, director, trustee, or non-legal advisor in a charitable or civic organization not conducted for profit. Under this rubric, the Committee is satisfied that refereeing should not reflect adversely upon your impartiality or interfere with the performance of your judicial duties. Further, it does not appear that you will be involved in either soliciting funds or membership.

³ See *Ohio Advisory Opinion 2003-6* (2003).

⁴ See *id.*

The compensation you receive must be reasonable and may not exceed what another person would receive for the same activity.⁵ The nominal compensation you have described appears reasonable and you have represented that it is equal to or less than what others would receive for the same activity. Of course, judges should regularly file reports of compensation received for extra-judicial activities in accordance with Canon 6(c) and the requirements of the Supreme Court.⁶

IV. CONCLUSION

The Committee concludes that under the Delaware Judge's Code of Judicial Conduct it is permissible to referee youth basketball games for nominal compensation.

For the Committee:

Donald F. Parsons, Jr.
Judicial Ethics Advisory Committee

lef

cc: Members of the Judicial Ethics Advisory Committee
The Honorable Joseph R. Slight, III, Chair
The Honorable Mardi F. Pyott, Vice Chair
The Honorable Kenneth S. Clark, Jr., Secretary
The Honorable James T. Vaughn, Jr.
The Honorable Sheila G. Blakely

⁵ Delaware Judges' Code of Judicial Conduct, Canon 6(A).

⁶ Delaware Judges' Code of Judicial Conduct, Canon 6.

December 16, 2004

Page 6

The Honorable Robert B. Coonin