



Ohio Board of Professional Conduct

OPINION 2021-11

Issued December 10, 2021

Withdraws Adv. Ops. 1986-02, 1989-28, 1994-12, 1995-9

Extrajudicial Activities of Teaching and Speaking

SYLLABUS: A judge may teach a course, accept a speaking engagement, or teach a continuing education course. A judge may accept compensation and reimbursement of expenses for teaching. A judge may accept reimbursement of expenses but not compensation for speaking engagements.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

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QUESTIONS PRESENTED:

1. Whether a judge may teach a course at public or private college or university and receive compensation and reimbursement for expenses.
2. Whether a judge may teach a continuing legal education (CLE) course and receive compensation and reimbursement for expenses.
3. Whether a judge may give a motivational speech and receive compensation and reimbursement for expenses.

APPLICABLE RULES: Jud.Cond.R. 1.2, 2.1, 2.10, 2.11, 3.1, 3.11, 3.12, 3.14, 3.15

OPINION:

Judges are encouraged and uniquely qualified to participate in extrajudicial activities that concern the law, the legal system, and the administration of justice. A judge's participation "helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system." Jud.Cond.R. 3.1, cmt.[2].

Teaching a CLE, teaching a class at a state college or university, either public or private, or accepting speaking engagements is permissible under the Code of Judicial Conduct when time permits, judicial independence, integrity, and impartiality are not compromised, and the judge complies with all applicable provisions of the Code. Jud.Cond.R. 3.1., cmt. [1], 3.11(B)(3). The Code of Judicial conduct does not limit a judge to speaking or teaching on topics pertaining only to the law, the legal system, or the administration of justice.

Precedence of Official Duties

Engagement in an extrajudicial activity like teaching or speaking requires a judge to give precedence to his or her official judicial duties. Jud.Cond.R. 2.1. Consequently, a judge should not accept an opportunity to teach or an invitation to speak if the activity will interfere with the regular performance of the judge's official duties. For instance, a judge's teaching schedule should not create conflicts with the judge's daily docket or administrative schedule. The judge must also avoid the appearance that he or she is devoting a significant amount of time to teaching or speaking as an extrajudicial activity.

Maintaining Judicial Impartiality

A judge's teaching or speaking activities should not appear to a reasonable person to undermine the judge's impartiality. Jud.Cond.R. 1.2. The subject matter and the audience should be considered before a judge accepts an offer to teach or speak. For example, a judge may teach a CLE on OMVI and criminal domestic violence laws and procedures, but should not teach a course on how to defend an OMVI case or how to best prosecute a domestic violence case. Such conduct would raise questions about the judge's impartiality when presiding over cases involving the same issues. S.C. Adv. Comm. Op. 22-2006, Neb. Jud. Ethics Op. 06-04.

Commenting on Impending or Pending Matters

When accepting teaching or speaking opportunities a judge must be careful to avoid areas concerning pending or impending cases as part of the offered subject matter. A judge is specifically prohibited from making statements about cases that might affect the outcome or impair the fairness of pending or impending cases. Jud.Cond.R. 2.10. On

the other hand, a judge may speak generally about the law, the legal system, the administration of justice, court procedures, and his or her role as a judge.

Frequent Disqualification When Teaching

A judge must avoid participation in extrajudicial activities that would lead to the judge's frequent disqualification. Jud.Cond.R. 3.1. Frequent disqualification in the context of teaching may arise when a college or university that employs the judge regularly appears as a party in his or her court. In such a situation, a judge must examine whether he or she can be fair and impartial or harbors any bias or prejudice toward his or her employer. Jud.Cond.R. 2.11. In those situations where a reasonable person may question the impartiality of the judge, a waiver of disqualification may be sought. Jud.Cond.R. 2.11(C). If a judge possesses personal bias or prejudice in a matter concerning the entity where the judge teaches, waiver of disqualification is not available, and the judge must recuse from the matter. In the latter situation, a judge's frequent disqualification would require the judge to forego the teaching opportunity.

Compensation for Teaching

A judge may receive compensation for engaging in the extrajudicial activity of teaching a CLE or college or university course. The compensation must be reasonable and proportionate to the teaching duties performed. More specifically, the compensation must not exceed that what someone who is not a judge would receive for the same activity. Jud.Cond.R. 3.12, cmt. [1B]. Jud.Cond.R. 3.12. In addition, the source and amount of the compensation must not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. *Id.* Compensation for teaching is not considered an "honorarium" otherwise prohibited under the Ohio Ethics Code, discussed *supra*, nor is a teaching position at a public institution considered the holding of an additional office of profit or trust prohibited under Ohio Const. Art. IV, §6(B). See *State ex rel Bricker v. Gessner*, 129 Ohio St. 290, 195 N.E. 63 (1995).

Compensation for Speaking

Judges are public officials subject to the Ohio Ethics Law. R.C. §102.01(B). Public officials who file financial disclosure statements are prohibited under the Ohio Ethics Law from accepting an honorarium. R.C. §102.03(H)(1). Jud.Cond.R. 3.12, cmt. [1A]. An

“honorarium” is defined as “any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or similar gathering.” R.C. §102.01(H). The Ohio Ethics Commission has explained that the activities listed in the definition of “honorarium” are typically applied to isolated or one-time events. Oh. Ethics Comm. Staff Letter (Thomas), March 16, 2015. Consequently, the Board concludes that motivational speeches fall into the statutory category of “any speech given” and therefore a judge may not receive compensation for a motivational speech, or any other speech, under the Ohio Ethics Law.

Reimbursement of Expenses for Teaching or Speaking

Reimbursement of expenses related to teaching or speaking, such as travel, food, or lodging, must be limited to the actual costs incurred by the judge and cannot give the appearance of influence the judge’s judicial duties or appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality. Jud.Cond.R. 3.14. Before accepting a reimbursement for expenses, a judge should consider the enumerated factors set forth in Jud.Cond.R. 3.14, cmt. [3]. Reimbursement of expenses of public officials is permitted by R.C. 102.03(H)(1).

A judge is required to report any compensation received for teaching and reimbursement of expenses for teaching and speaking on the annual financial disclosure statement required to be filed under Jud.Cond.R. 3.15. Jud.Cond.R. 3.12, cmt. [2].