



Ohio Board of Professional Conduct

OPINION 2022-10

Issued October 7, 2022

Withdraws Adv. Op. 2004-3

Magistrate Serving as a Trustee of a Nonprofit Condominium Association

SYLLABUS: A magistrate may serve as a trustee of a nonprofit condominium association if the extrajudicial activity does not undermine the magistrate's independence, integrity, or impartiality, lead to frequent disqualification, or interfere with the performance of judicial duties.

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Ohio Board of Professional Conduct

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APPLICABLE RULES: Jud.Cond.R. 1.3, 2.1, 2.11, 3.1 3.7, 3.9, 3.10, 3.11

QUESTION PRESENTED:

Is it proper for a magistrate to serve as a trustee of a nonprofit condominium association in which the magistrate resides and owns a condominium?

OPINION:

Magistrates are generally permitted to engage in extrajudicial activities, including service on nonprofit boards sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations, but are not permitted to serve as an officer, director, manager, advisor, or employee of a for-profit business. Jud.Cond.R. 3.7; Jud.Cond.R. 3.11.

Condominium association boards typically perform or oversee a variety of functions on behalf of the owners of each condominium unit. For example, a board may engage in the investment of reserve funds, enter into agreements with contractors and vendors, engage in collection activities of condominium fees, and resolve disputes

between residents. While a nonprofit condominium association is not necessarily a civic organization nor a business entity, it has characteristics of both. MA Sup. Jud. Ct. Comm. Jud. Eth. 2001-6 (2001). The activities of a condominium association trustee, while performed in part on behalf of other property owners, helps to protect the trustee's own real estate investment. In the Board's opinion, a magistrate's ownership of a condominium and membership on the condominium association board is more akin to the permissible participation in a nonprofit business entity that manages the personal financial resources held by the magistrate. Jud.Cond.R. 3.11(B)(2), cmt.[1]. Va. Jud. Ethics Adv. Comm. Op. 00-9 (2000).

Based on the foregoing analysis, the Board concludes that it is proper for a magistrate to serve as a trustee of a condominium association when other rules of judicial conduct governing the magistrate's independence, integrity, and impartiality are followed. MA. Sup. Jud. Ct. Comm. Jud. Eth. 2001-6 (2001); Tx. Jud. Eth. Comm. Op. 279 (2001); S.C. Adv. Comm. Std. Jud. Cond. Op. 10-2017 (2017). First, a magistrate must disqualify himself or herself if the condominium association is a party appearing in a matter before the magistrate. Jud.Cond.R. 2.11. If recusal is necessary on a more frequent basis, the magistrate should resign from the association board. Jud.Cond.R. 3.1(B); Jud.Cond.R. 3.11(C)(2). Lastly, the magistrate cannot engage in activities with the association board to such a degree that it would detract or interfere with the proper performance of his or her judicial duties. Jud.Cond.R. 3.11(C)(1). Consequently, a magistrate should decline to serve as trustee if the position will result in interference with his or her judicial duties or cause his or her frequent unavailability. Jud.Cond.R. 2.1, cmt. [1].

If a management company is not retained by the association board to assist it in the performance of its administrative functions and duties, the individual trustees may be required to perform duties and activities on behalf of the association that often require direct dealings with unit owners and third parties. A magistrate serving on an association board should ensure that any assigned duties are compatible with his or her ethical obligations as a judicial officer. A fulltime magistrate serving as a trustee may not engage in the resolution of disputes between residents due to the restriction against engaging in mediation or arbitration services. Jud.Cond.R. 3.9. Nor should a magistrate, because of

their legal education and bar admission, act in any capacity as a legal advisor or representative for the association board. Jud.Cond.R. 3.10.

Because of a magistrate's judicial role, he or she must avoid abusing the prestige of office when dealing with unit owners or third parties while serving as a trustee of an association board. At no time should a magistrate use his or her position or title as a judicial officer in connection with board service. Jud.Cond.R. 1.3; Jud.Cond.R. 3.11, cmt. [1].