

JEAC 1999-2
August 3, 1999

Facts

Judge _____ presently is appointed as a Judge with _____ for the State of Delaware. He has requested an opinion whether his business activity as a musical entertainment disc jockey violates the Judicial Code of Conduct. It has been in operation under the name of “DJ’s Delaware’s Finest” for approximately four years. The business provides music for special functions at civic organizations such as the American Legion and the Elks, and for private wedding parties.

The business is operated by the Judge, his nephew and two other close friends. It has applied for and paid all appropriate Delaware business license fees, and appropriate State and Federal taxes. Judge _____ indicates that the business does have a heavy schedule. There is some indication that he may attempt to adjust his judicial schedule to accommodate the demands of the private business. However, _____ to _____ it is clarified that Judge _____ indicates that he would not permit the demands of this business to any way interfere with his obligation as a judicial officer with the _____ Court.

Discussions

The Delaware Judges’ Code of Judicial Conduct, adopted January 1, 1994, provides in Canon 5:

- (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.

The commentary section provides, “A judge’s participation in a closely held family business may be prohibited if it takes too much time or

involves misuse of or is demeaning to the judicial office or if the business is likely to come before the judge's court.”

The facts in these proceedings clearly indicate that the business in question constitutes a family business because it is operated by the Judge with his nephew. Therefore, the request should be analyzed under the provisions of Canon 5.C.(1). The principal goal of this Canon was not written to discourage business arrangements, but rather to protect the appearance of impartiality, with a second emphasis on the need to avoid those activities which might interfere with the conduct of judicial duties. 37 Emory Law Journal, Winter 1988.

I have not found during my research any opinion which has considered the particular question posed in the proceedings. However, the Illinois Judicial Ethics Committee in Opinion No. 97-12, July 9, 1997 confronted a similar issue which is instructive. In that matter, the judge was a violinist who often filled in with the local symphony orchestra. They were often asked to play during wedding ceremonies. The judge was compensated for his appearances at the rate consistent with his fellow musicians.

While that Committee did not analyze the activity under Canon 5.C.(1), but rather under Canon 2 and Canon 5.A, it is helpful in resolving the question before us. That Committee concluded “since the judge’s musical endeavors will not interfere with the judge’s official functions, such endeavors are permitted by the Code of Judicial Conduct.”

The Supreme Court of Wisconsin, Judicial Conduct Advisory Committee, in Opinion 97-1R (revised) October 6, 1997, similarly concluded that sale of photographs taken by a judge during a recent trip to the Orient at a booth at an ethnic festival was permissible under the Judicial Code of Ethics.

Turning now to the particular issue here, the language in the first part of Canon 5.C.(1) focuses on those activities which would reflect adversely on the judge’s impartiality. Therefore, the inquiry is whether this activity would constitute such an affect. The services rendered by the business is to provide musical entertainment. While it is conceivable under some remote circumstances a judge could come in contact with an individual where his impartiality may be questioned after he negotiated an agreement to provide service, such is so remote that I do not find it to be a major concern which would cause disqualification.

Therefore, with respect to this first prohibition involving the judge’s impartiality, it appears that it would not prevent the judge from engaging in this activity so long as there is no case pending in the judge’s court involving the individual for which he or his group is to contract.

The second prohibition of Canon 5.C.(1), provides “a judge should refrain from activities or financial dealings which will interfere with the proper performance of judicial duties.” The goal of this provision is to ensure a judge devote his primary efforts to the discharge of his judicial responsibilities. Therefore, the operation of the business must not be conducted such that it would conflict with or impede the discharge of his official judicial duties. Judge has provided assurances that such would not occur, as a consequence, this condition is satisfied.

The third prohibition of Canon 5.C.(1) provides “a judge should refrain from financial and business dealings which tend to exploit or demean the judicial position. While the Committee is mindful of the Judge’s First Amendment rights of free expression, it is clear that this provision of the Canon places some restriction on the nature of the performances. The Committee, however, does not attempt to define what is demeaning for that will take us into areas too far afield, but you should be mindful of this prohibition.

The final prohibition of Canon 5.C.(1) provides “a judge should refrain from financial and business dealings which would tend to involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves.” The language in this part is particularly clear, and it prohibits the judge from engaging in transactions with lawyers that frequently appear in this court or parties that tend to have cases frequently before the court. To restate a position set forth above, while we conclude that the Canon does not prohibit the judge from engaging in such business activity, clearly it prohibits frequent transactions with lawyers that practice in his court and parties that tend to bring cases on a frequent basis.

The Committee concludes that you may, consistent with Canon 5.C.(1), engage in the business of being a disc jockey providing: (1) no business is solicited or transacted when you are on official judicial assignment; (2) it does not conflict with any assigned judicial duties; (3) the music, language or type of function involving your performance is not demeaning; (4) there is no reference to your judicial status in conjunction with your business; and (5) that the business does not involve persons that frequently appear before the court, either lawyer or non-lawyer.