

ISSUE I

May a Circuit Court Judge continue as a shareholder, officer, or member of the Board of Directors of a closely held corporation which, as part of its business activities, owns commercial property which it leases as office space to a law firm whose attorneys are likely to come before the judge's Court?

ANSWER

No.

ISSUE II

May the judge avoid a conflict with the SCRs by resigning his or her position as a director and officer of the closely held corporation, and, temporarily, transferring ownership in his or her stock in that closely held corporation to another shareholder with the intent of having the shares of stock reacquired by the judge after his or her judicial tenure has concluded?

ANSWER

No.

FACTS

A recently elected judge was, at the time of his election to the bench, a shareholder, officer, and director of a closely held corporation. The business of the corporation includes, among other things, ownership of commercial property. One of the commercial properties owned by the corporation is leased as office space to a law firm whose attorneys will likely appear before the judge. The initial inquiry is whether the judge may maintain his or her shares in the closely held corporation and positions on the Board of Directors and as an officer of that corporation during his or her judicial tenure. In the event that the answer to this question is "no," which it is, then the judge inquires whether he or she can avoid the conflict with the SCRs by resigning as a director and officer of the closely held corporation and temporarily transferring ownership in his or her stock, through a sale or other conveyance, to another shareholder within the closely held corporation. The judge contemplates that the transfer would be with the intent and provision that the judge would be able to re-purchase, or otherwise re-acquire, the transferred shares after the judge's tenure on the bench concludes.

DISCUSSION

The Committee concludes that the issue presented involves provisions of SCR 60.02, 60.03(1), 60.05(1), 60.05(4)(a)1.b, and 60.05(4)(a)2.

A. SCR 60.02 states:

A judge shall uphold the integrity and independence of the judiciary.

This Rule also provides:

A Judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.

B. SCR 60.03 states:

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

Subsection (1) of this Rule provides:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

C. SCR 60.05 states:

A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Subsection (1) of this Rule provides:

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.

D. SCR 60.05(4)(a)1.b states:

(a)1. A judge may not engage in financial or business dealings that could meet any of the following conditions:

...

b. Involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

E. SCR 60.05(4)(a)2 states:

A judge shall comply with sub.(4)(a)1 as soon as reasonably possible and, in any event, within one year of the applicability of this chapter to the judge.

F. SCR 60.04(5) states:

A judge shall keep informed of the judge's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of the judge's spouse and minor children residing in the judge's household having due regard for the confidentiality of the spouse's business.

Opinions No. 97-4 (September 18, 1997) and 02-2 (March 15, 2002) of the Judicial Conduct Advisory Committee dealt with situations quite similar to that addressed in the present opinion. Both of these opinions conclude that a lease agreement between a judge and a lawyer likely to come before the court on which the judge serves violates SCR 60.05(4)(a)2 because such agreements constitute a proscribed continuing business relationship. The opinions also concluded that such agreements between a judge and a lawyer likely to come before that judge violate SCR 60.02 and 60.03(1) because of the appearance of impropriety presented by the relationships created by the agreements. A continuing business relationship between a judge and a lawyer or law firm may raise reasonable doubt in the public mind as to the extent to which this relationship may effect the judge's ability to be fair and impartial.

The Committee recognizes that the current case involves a situation wherein the judge is not in a "direct" personal business relationship with the lawyers likely to come before the judge, but rather the judge is an officer, director, and shareholder of a closely held corporation which maintains the lease agreement with the lawyers. The Committee, however, views this as a distinction without any practical or ethical difference. The judge's involvement in the closely held corporation holding the lease agreement in question places the judge in a position violative of SCR 60.05(4)(a)1.b which states:

(a)1. A judge may not engage in financial or business dealings that could meet any of the following conditions:

...

- b. Involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

It is clear that the closely held corporation, and therefore the judge with a direct financial interest in the corporation, would have continuing financial and at least indirect business dealings with lawyers likely to come before the court on which the judge serves. This conduct is prohibited.

The temporary transfer of the judge's shares of stock in the closely held corporation with the intent that these shares will be returned to the judge at the conclusion of the judge's tenure on the bench would not obviate the conflicts with the referenced SCRs. If anything, such a transfer would amount to a transparent and ineffective attempt to avoid the impact of the SCRs on the judge. SCRs 60.02 and 60.03 make it clear that one of the primary purposes of these SCRs is to avoid the appearance of impropriety and to uphold the integrity of the judiciary. When these provisions of the SCRs are viewed in conjunction with SCR 60.04(5), requiring the judge to "keep informed of the judge's own personal and fiduciary economic interests" it becomes apparent to the public mind, as well as any informed officer of the court, that the judge would be maintaining a real and continuing interest in the business of the closely held corporation.

In essence what the judge would be attempting would be to place his or her interests in the closely held corporation in a form of "blind trust." In that the SCRs do not make any provision for a blind trust arrangement, the conduct would be inappropriate. In addition to not accomplishing a true resolution of the referenced conflicts with the SCRs, the conduct contemplated would, if anything, enhance and magnify the appearance of impropriety of the activity to any outside observer.

The public expects a high standard of conduct on the part of judges. A judge must be careful that the judge's behavior, and memberships on or off the bench, does not undermine public confidence in the integrity and/or impartiality of the judiciary. It is, therefore, the opinion of the Committee that, pursuant to SCR 60.05(4)(a)2, the judge must take action "as soon as reasonably possible", and certainly within one year of the applicability of Chapter 60 of the Supreme Court Rules to the judge, to resolve these issues. Any participation or ownership in the privately held corporation maintaining the lease with the law firm whose lawyers will likely appear before the judge would constitute a continuing violation of the referenced Supreme Court Rules. At any time before a complete resolution of these issues is accomplished, the judge should be fully cognizant of SCR 60.04(4) regarding any judicial interaction with the lawyers to whom the corporate property is leased.

CONCLUSION

The Committee concludes that a judge may not hold shares in, or be an officer or director of a closely held corporation which, among other activities, owns property which it leases as office space to a law firm whose members are likely to appear before the court on which the judge serves. Membership or participation in such a closely held corporation constitutes a continuing business relationship on the part of the judge which relationship is not only prohibited by SCR 60.05(4)(a)1.b, but also by the other referenced provisions of the Code of Judicial Conduct designed to preserve the integrity and independence of the judiciary. For essentially the same reasons, juxtaposed upon SCR 60.04(5), the Committee further concludes that a judge may not temporarily transfer ownership in his or her stock in that closely held corporation to another shareholder with the intent of having the shares of stock reacquired by the judge after his or her judicial tenure has concluded.

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. 07-2 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 24th of September, 2007.

/s/ George S. Curry

Hon. George S. Curry
Chair