

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 3 - 2022

RE: The propriety of a full-time municipal judge serving on the board of a homeowners association.

FACTS

A full-time municipal judge is also a member of a homeowners association (“the association”). The association is not part of any government entity. It is a non-profit, non-stock, mutual benefit corporation. There is an opening on the association’s board. The board members receive no compensation. The meetings of the board occur several times throughout the year, generally in the afternoons or on weekends.

The judge would like to seek the position, which will be selected by vote of the members of the association. The association is holding an event for members to meet the candidates and the vote will be taken a month later. The judge inquires as to:

- 1) whether he/she may run for the position on the board of the homeowners association?
- 2) if so, may the judge email other members prior to the election as an introduction and include a résumé? The email would not include the judge’s title but the résumé would include the fact that the judge is currently employed as a municipal judge.
- 3) as a candidate, may the judge participate in a meet-and-greet the candidates event sponsored by the board? The judge does not intend to introduce herself/himself as a judge but he/she may be asked a question regarding current employment.

CONCLUSION

- 1) The judge may serve on the board of a homeowners association.
- 2) The judge may send out an introduction email and include a résumé.

3) The judge may participate in a meet-and-greet the candidates event.

OPINION

In a recent opinion, Number 15-2021, we discussed the Canons and their application to the homeowners' associations, although the question presented there involved whether a judge could moderate a meet-and-greet candidates for the board rather than a judge seeking a position on the board. However, since much of that analysis is relevant here, we will repeat portions of that opinion.

In Opinion 2-1983, we found that a magistrate should not serve in any type of administrative or controlling capacity in a landowner association (but did find the judge could be a member, provided the judge adhere to other provisions of the Canons). In that situation, the landowner association's function would be to address changes caused by real estate investors' large land purchases, such as reassessment of taxes, rezoning, etc. We based our opinion on then-Canon 5¹ which stated that a judge could serve as an officer, director, trustee, or non-legal advisor "of a civic organization which is not for the economic benefit of its members." Op. 2-1983. We further found that while a property owners association did not fit the definition of a "civic organization,"

the analogy is clear that a judge should not serve in an administrative or controlling capacity of an organization conducted for the economic benefit of its members. From the facts before us, it appears that the economic well-being of the land owners, albeit in a round-about way, is to be one of the primary purposes of the association.

Id.

¹ Opinion 2-1983 was decided under a previous version of the Canon. The Committee has not performed an extensive analysis of all of the differences in those Canons and the ones adopted in 1995 that are in effect today. However, Canon 5 at that time addressed extra-judicial activities, which are now addressed in Canon 4.

However, in a later opinion, without referencing Opinion 2-1983, we found that a part-time magistrate could be a member and serve as an officer of a Board of Directors for an out-of-state homeowners association where the judge owned a vacation home. Opinion 10-2017. Our decision was based on Canon 4D(3), which states:

A judge may serve as an officer, director, manager, general partner, advisor or employee of a business entity if that service does not conflict with the judge's judicial duties, create the appearance of impropriety or otherwise violate any provision of this Code.

The 1983 opinion analyzed the issue under the Canon governing participation in a civic organization, whereas Opinion 10-2017 applied the Canon pertaining to business entities. It is unclear if a version of Canon 4D(3) that was applied in the 2017 opinion existed in 1983. The current version of Canon 4C(3), pertaining to civic organizations, is similar to the Canon quoted in the 1983 opinion, with one significant change. The current version permits a judge to serve as officer, director, trustee or non-legal advisor of a civic organization “not conducted for profit.” In other words, the current version does not include the phrase “of a civic organization which is *not for the economic benefit of its members*” that was in the 1983 Canon. (Op. 2-1983, emphasis added). This change is important because while a homeowners association, by its nature, may provide some economic benefit to its members, these associations are generally set up as not-for-profit organizations.

We do not believe that a homeowner’s association fits neatly into either the category “civic organization” or “business entity.” Here, homeowner’s association is structured as a nonprofit corporation, so the judge could serve as an officer, director, trustee or non-legal advisor under Canon 4C(3) if the association is considered a civic organization. If classified as a business entity, the judge may serve as officer, director, manager, general partner, advisor or employee, under

Canon 4D(3) provided the other conditions of Code are met. The Commentary to Canon 4D(3) explains:

A judge may participate in a business if that participation does not conflict with the judge's judicial duties, create the appearance of impropriety or violate any other provision of this Code. For example, a judge may be prohibited from participation if the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participation if the judge's participation would involve misuse of the prestige of office.

The jurisdiction of the municipal court is limited to criminal, not civil, cases, S.C. Code Ann. § 14-25-45. Thus, the association itself would not come before the judge. It is possible that other members of the board or the association could occasionally come before the judge, but the judge could simply recuse himself/herself if appropriate. Furthermore, it is not likely that the judge's participation as a board member would cause significant time away from judicial duties.

Turning to whether the judge's service as board member (or participation in election events) would violate any other Canons or create the appearance of impropriety, we look to see if such service would be considered inappropriate political activity, which is governed by Canon 5. Canon 5A(1) states that a judge shall not:

- (a) **act as a leader or hold an office in a political organization;**
- (b) publicly endorse or publicly oppose another candidate for public office;
- (c) make speeches on behalf of a political organization;
- (d) attend political gatherings;** or
- (e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

Id. (emphasis added). We do not think a homeowners' association should be considered a political organization or that the meet-and-greet should constitute a political gathering. Therefore, there is no impediment to the judge's participation in the election process.

We also find that the judge can send an introductory email to other association members, provided that the judge does not misuse the “prestige of office” to gain an advantage. See, Commentary to Canon 4D(3). Therefore, while the email can include details about the judge’s education, family members, reasons for seeking the position on the board, etc., it should not note or discuss the judge’s judicial position. However, in Opinion 12-2003, we did allow a judge that had written a novel to list his or her professional occupation as judge in the biographical sketch about the author (but not in advertising material to sell the book). We believe that attaching a résumé to the email that simply lists the judge’s employment is similar to an author’s biographical sketch and is permitted. If asked questions about employment at the candidate meet-and-greet, the judge should simply acknowledge his/her employment as a municipal judge (and the dates of employment if asked), but refrain from other details.

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES, CHAIR

s/ William H. Seals, Jr.
WILLIAM H. SEALS, JR.

s/ Keith M. Babcock
KEITH M. BABCOCK

February 22, 2022