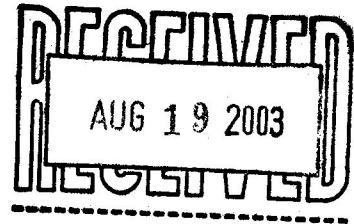


JUDICIAL ETHICS COMMITTEE

Advisory Opinion 03-1

Issued: 07/24/2003



Issue

Whether a Probate Judge may respond to a subpoena to appear before an arbitration hearing concerning his staff's pending grievances against the Register of Probate.

Statement of Facts

A Probate Judge received a subpoena issued pursuant to an arbitration proceeding involving the Maine State Employees Association, SEIU Local 1989. According to the Judge, the matter concerned his Court staff's pending grievances against its Register of Probate. The Probate Judge was unclear, in view of Judicial Canon 4 C)(1) and perhaps other canons, as to whether his appearance and testimony in this matter would be prohibited

Discussion

Canon 4(C)(1) of the Code of Judicial Conduct provides as follows:

A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

Conclusion

The language in Canon 4(C)(1) applies to legislative and executive public hearings, not adjudicatory hearings. There is no express prohibition in the Code of Judicial Conduct against attending and giving testimony in response to a subpoena. There is no statutory prohibition against subpoenaing a judge to appear as a witness. Additionally, there is no prohibition in the Maine Constitution against subpoenaing a judge to serve as witness in a case. Thus, we conclude

that a judge may legally be subpoenaed to appear in any case as a witness, as long as he is not the presiding judge in the proceeding.

Note: Since the matter which gave rise to the Probate Judge's inquiry involved an arbitration in which the law firm of the Chairman of the Judicial Ethics Committee was involved, the Judge requested that the Chairman not participate in the response to his inquiry, and the Chairman did not.

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