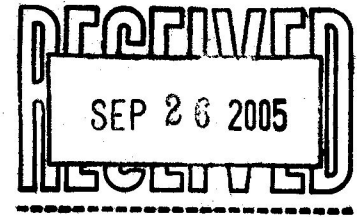


JUDICIAL ETHICS COMMITTEE  
Advisory Opinion 05-2  
Issued: September 21, 2005



**Issue**

May a Maine Judge who has been appointed and qualified be barred from participating under Canon 4(D)(3) from the calculation and payment of his share of his former law firm's income in December, 2005 for that portion of the year prior to his undertaking the judgeship; namely, January 1, 2005 to August 30, 2005.

**Statement of Facts**

With regard to the Judge's former law firm, the annual earnings of the shareholders in the firm are historically determined at the end of each year, when all expenses and revenues are known for the entire year. The shareholders have only received a basic monthly draw during the year 2005.

Canon 4(D)(3) provides as follows:

- (3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:
  - (a) a business closely held by the judge or members of the judge's family, or
  - (b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

**Discussion**

As we read the inquiry, the Judge would in fact disqualify himself from participating in any judicial proceeding in which his former partners or associates would appear during the period ending December 31, 2005.

We have reviewed the decisions of Ethics Committees of other jurisdictions faced with this problem with which almost any new judge is faced when coming from the private sector. It

has been stated that a judge may not share in the profits a firm earns after the judge's departure. Nebraska Advisory Opinion 89-1; U.S. Advisory Opinion 24 (revised 1998). Furthermore, a judge must divest all financial interest in a professional legal association (or corporation) upon taking the bench.

In sum, determining the amount of money that is due to the judge from his former law partners should be determined as of the date that he becomes a judge. The proposal here would defer that determination until December 31, 2005.

### **Conclusion**

The Committee views the proposal advanced by the Judge not to be in conformance with the Canons of Judicial Ethics and suggests that the Judge should work out a lump sum that is due for his interest in the firm practice from January 1, 2005 to the date of his acceptance of the judgeship.

Various decisions in other jurisdictions allow the payment of the amount due over time so the former law partners are protected. We believe those decisions are applicable here, if the parties involved agree. Obviously, regardless of any other disqualification provisions that might apply, so long as any sum remains due to the Judge from his former partners and associates, he must disqualify himself in any proceeding in which they may appear.