

**JUDICIAL ETHICS COMMITTEE
OF THE
ADVISORY COMMITTEE ON THE CODE OF JUDICIAL CONDUCT**

Question: Judge J is a trustee and member of the Executive Committee of a private school. He advises that recently a number of teachers at the school were not rehired or were given less classroom time because of reduced enrollment. Judge J says that "(w)ith the onset of a labor dispute it occurred to (him) that (he) could be called as a witness in this labor dispute." He asks whether this fact situation suggests a conflict of interest or, in any other way, requires that he should resign as trustee.

Response: The responsibility of this Committee is to render advisory opinions on matters involving the interpretation of the Maine Code of Judicial Conduct ("Code"). This response is therefore limited by that charge to the Committee.¹

The Committee has not been provided with any detailed information as to the nature of the private school. The Committee assumes the school is an educational institution not unlike similar institutions extant in Maine. The Committee assumes the school is subject to Maine laws respecting education, and Maine and Federal laws with respect to discrimination on account of race, creed, color and the like.²

If the Committee's assumptions in the preceding paragraph as to the essential nature of school with which Judge J is affiliated are correct, it is the Committee's opinion that the Code does not require Judge J to resign from his position as trustee or member of the Executive Committee of the school simply because of his being such a trustee or Executive Committee member. A judge may participate in civic and charitable activities.

There is no provision of the Code which, because Judge J is asked to testify in an action involving the school, would require him to resign from the board of trustees or the Executive Committee. The Committee knows of no basis on which a judge may refuse to testify about unprivileged facts of which he may have knowledge. Judge J's testifying in such an action does not, *ipso facto*, represent a conflict of interest.

¹The Supreme Judicial Court is considering promulgating a substantial revision of the Code of Judicial Conduct but that has not been done at this writing. The Committee therefore responds to this inquiry based on the provisions of the existing Code, but it will also make some observations respecting the differing effect which the proposed revision of the Code would have on Judge J's question.

²The last clause is added particularly because the proposed revised Code does require a judge to withdraw from membership in any organization which practices invidious discrimination on account of race, sex, religion or national origin. The Committee suspects it takes no liberty in assuming that the activities of Judge J's school do not fall within that proscription.

There are a number of other matters which may not be implicated by Judge J's question as asked but which may warrant Judge J's attention. Of course, Judge J should disqualify himself in any proceeding if he has reason to believe that, because of his involvement with the private school, he could not act with complete impartiality or in a proceeding in which impartiality might reasonably be questioned. The proposed revised Code is more specific and would suggest disqualification on the judge's own motion or would mandate disqualification on motion of judge's of any party to the proceeding, if Judge J should have any more than a de minimis interest that could be substantially affected by the proceeding. It is the Committee's opinion that Judge J should not sit on any case involving the interests of the private school unless Judge J could satisfy himself, at least, that he had less than a de minimis interest in the subject matter of the proceeding.

The proposed revised Code imposes another important general prohibition against a judge serving as a trustee or officer of an organization if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be engaged frequently in adversary proceedings in the court in which the judge is a member.

There are still other matters further afield which might warrant Judge J's attention such as, while it may be proper for a judge to be a member of the board of trustees of an educational institution, the judge would not be permitted to solicit funds for such an institution or use or permit the use of the prestige of the judge's office for that purpose. A judge should not be a speaker at the organization's fund raising events. A judge should not give investment advice to such an organization although he may serve on its board even though it has the responsibility for approving investment decisions.³ This is not intended to be an exhaustive list of such "other matters."

³The proposed revised Code does not make such an exception so as to allow a judge to involve himself in investment decisions.