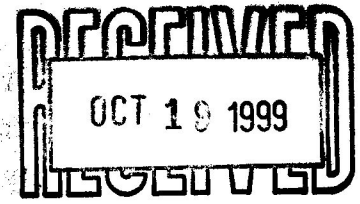


JUDICIAL ETHICS COMMITTEE
Advisory Opinion No. 99-1
Issued: October 18, 1999



Issue: A judge of probate, who also practices law in a multi-lawyer firm, has been requested to write an article on "trust based estate planning." The article is to be included in a newspaper insert and circulated state-wide. May the byline associated with the article refer to the judge's position as judge of probate, either with or without reference to the judge's law practice?

Discussion: Canon 2B of the Maine Code of Judicial Conduct provides, "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . . ." In Maine, judges of probate hold that judicial office on less than a full-time basis and are permitted to practice law. See Maine Code of Judicial Conduct Part II, section 1(B)(1)(a) (exempting judges of probate from Canon 4G, which prohibits judges from engaging in the practice of law); see also 4 M.R.S.A. §§ 307, 309 (relating to conflicts of interest between proceedings pending in Probate Court and matters within the probate judge's law practice). This circumstance, unique among Maine's judges, requires particular sensitivity to the impact of their judicial position and the trappings of the judicial office on their private pursuits. Vigilance must also be maintained to ensure that the judge of probate does not engage in activities which create the appearance that the judicial office is used to promote the judge's private interests. "A part-time judge who practices law is in a position of delicacy and should be scrupulously careful not to use, or seem to use, his judicial position to promote his private law practice." ABA Comm. On Ethics and Professional Responsibility Informal Opinion 1473 (1981) (concluding that the staff at the law offices of a part-time judge may not answer the telephone with the greeting, "Judge X's office, may I help you?"). See also Canon 2A ("A judge. . . shall act at all times in a manner that promotes

public confidence in the integrity. . .of the judiciary."); N. Y. Advisory Committee on Judicial Ethics Opinion 92-125 (1992) (concluding that a part-time judge may not advertise his private law practice with a reference to his judicial position).

We conclude that the purpose underlying Canon 2B is compromised if the judge of probate simultaneously identifies himself in the byline as a judge of probate and a member of the judge's law firm. The subject of the article appears to relate to matters pertinent to the Probate Court's jurisdiction, and it is also an area of law in which attorneys sometimes practice (although the present inquiry does not reveal whether the judge's legal practice encompasses trust and estate planning). This combination of circumstances could create an impression that the judge has used his judicial office in a way that benefits his private interests. Further, even though unintended, it might have that actual effect: a person reading that article might be influenced to secure legal counsel from the author in part because the author has held himself out to be a judge of probate.

The Committee recognizes that the judge's both judicial position and his active vocation as an attorney may be relevant to his qualifications to discuss trusts and estate matters in the article. A person reading the article could find the discussion in the article to be more persuasive than one written by someone with different credentials. Nonetheless, we believe that the reference to both judicial office and the active practice of law is foreclosed by the Code.

The next question -- whether the byline may identify the author as a judge, without reference to the author's law firm -- is closer. To the extent that this designation generates the concerns discussed above, they clearly are more subtle. Those concerns, however, are not altogether absent. The topic of the article is "trust based estate planning." This characterization of the discussion in the article suggests that it would describe one or more ways in which a person might structure an estate. In its

essence, this amounts to professional guidance or counsel on matters often handled by a practicing attorney, even though in this case that guidance may be very general in nature. Thus, even if the author were to identify himself only as a judge of probate, the article might be viewed as something more commonly associated with legal advice and counsel. Because some of the readers presumably would be aware that the author also is also a practicing attorney, the concerns discussed above would arise in these circumstances. Thus, the Committee believes that an omission of the author's judicial position in the article's byline is the more cautious and prudent approach.