

(WITHDRAWN IN OPINION 19-02)

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 79-02
(October 24, 1979)

Treatment of Compensation for College Teaching by New Superior Court Judge

Issues

1. May a superior court judge receive compensation for teaching a course in philosophy at a city college or a law course at a criminal justice center?

Answer: No.

2. If not, may the superior court judge teach a college course without compensation?

Answer: Yes, subject to certain conditions.

Facts

The requesting judge was recently appointed to the superior court and has asked for the committee's opinion concerning the judge's continuing to teach a two-credit course in philosophy at Phoenix College and a one-credit course in law at the Criminal Justice Center at Arizona State University until the end of the semester. The committee assumes that the courses are taught regularly, at least weekly but *not* during customary court hours, and that the judge is currently regarded as an employee of each public educational institution. Recognizing that it may not be possible for a superior court judge to receive additional compensation under state law, the judge has also asked if the compensation can be refused or directed into a scholarship fund for needy students.

Discussion

Issue 1

It is the Advisory Committee's opinion that the judge should not continue to teach under the present employment relationship nor continue to receive a governmental salary or other regularly paid compensation. He may finish teaching the courses as a guest lecturer or teacher, however, if such status can be arranged.

Issue 2

As long as the judge does not receive a salary or equivalent compensation, he or she may teach a college course provided it does not regularly occur during normal court hours, no employer-employee relationship is established and no salary is contracted for or paid. Further, a salary or its equivalent intended as such compensation may not be paid into a scholarship fund.

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The Arizona Constitution, Article 6, Section 28, provides that: "Justices and judges of courts of record shall not be eligible for any other public office or for any other public employment during their term of office. . ." Teaching at a publicly funded college or university is public employment. The fact that compensation is waived or placed in a scholarship fund does not remove the prohibition against "public employment." *Matter of Sawyer*, 594 P.2d 805 (Or. 1979).

Canon 4 of the Code of Judicial Conduct deals with teaching of law courses and provides, in part, that:

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

- A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

Canon 5 of the Code of Judicial Conduct, *supra*, deals with teaching of non-legal courses and provides, in part, as follows:

A. *Avocational Activities*. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

Although ethically a judge may teach if it does not interfere with his judicial duties or cast doubt on his impartiality, constitutionally a judge may not accept public employment. It is the opinion of the committee that a judge could teach as a guest lecturer at a public institution but not as an employee. A judge could accept an honorarium or its intended equivalent for guest lecturing on an isolated or irregular basis.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 4A and 5A (1975).

Other References

Arizona Constitution, Article 6, Section 28.