



JUDICIAL STANDARDS COMMISSION STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2018-01

December 17, 2018

QUESTION:

May a judge serve as a manager in a real estate investment limited liability company (LLC) for the purpose of managing the judge's personal real estate investments or those of the judge's close family members?

CONCLUSION:

Yes. Canon 5C(2) of the North Carolina Code of Judicial Conduct allows judges to hold and manage their personal financial and real estate investments and the financial and real estate investments of "the judge's spouse, children, or parents . . ." Canon 5C(2) further provides that judges may also engage "in other remunerative activity not otherwise inconsistent with the provisions of this Code but should not serve as an officer, director or manager of any business." This language creates a clear distinction between managing a judge's real estate investments and "other remunerative activity." While a judge may engage in "other remunerative activity," the language of Canon 5C(2) imposes an additional restriction that a judge may not serve as an "officer, director or manager of any business." As such, when managing a judge's personal or family real estate investments, a judge may create and serve as a manager of a LLC created for that purpose, subject to any other applicable limitations imposed in Canon 5C. If engaging in other types of remunerative activity to generate outside income, however, a judge may not serve as an officer, director or manager of a business.

DISCUSSION:

Canon 5C(2) of the North Carolina Code of Judicial Conduct provides that ". . . a judge may hold and manage the judge's own personal investments or those of the judge's spouse, children, or parents, including real estate investments, and may engage in other remunerative activity not otherwise inconsistent with the provisions of this Code but should not serve as an officer, director or manager of any business." This language distinguishes between a judge's activity in managing

the judge's personal or family real estate investments and "other remunerative activity." The restriction on serving as an officer, director or manager is indicative of a restriction on the ability of a judge to earn outside income from sources other than the judge's personal financial or real estate investments. For example, the North Carolina Supreme Court in *In re Belk*, 364 N.C. 114, 691 S.E.2d 685 (2010) made clear that the restriction in Canon 5C(2) strictly prohibits a judge from serving as on the board of directors of a for-profit business corporation. *See id.* at 123-24, 691 S.E.2d at 692.

Although a judge may serve as the manager of a real estate investment LLC that manages the personal real estate interests of the judge or the judge's close family members, such service continues to be limited by the other applicable provisions of Canon 5C. Even with permitted business and financial dealings, judges must "refrain from financial and business dealings" that either reflect adversely on the judge's impartiality, interfere with the proper performance of the judge's judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. *See* Canon 5C(1). Based on these restrictions, a judge should not voluntarily serve as a manager of a LLC formed to manage the judge's real estate investments if other members are available who could otherwise serve in that role, and a judge should avoid that role when practicable in order to ensure that serving as a manager does not create the appearance of exploiting the judge's judicial position or unnecessarily adding business obligations where other members of the LLC could easily undertake those same duties. A judge should also not serve as a manager of a real estate investment LLC formed for the purpose of holding and managing the judge's personal or family real estate interests if doing so would create a need for frequent disqualification. *See* Canon 5C(3).

The Commission distinguishes this conclusion from Formal Advisory Opinion 2009-01, which addressed the question of whether a judge could remain the sole member and manager of a Professional Limited Liability Company (PLLC) established for the practice of law if the PLLC was placed in "inactive status." The Commission distinguished the language in Canon 5C(2) allowing judges to hold and manage personal investments from the language allowing judges to engage in "other remunerative activity" so long as not serving "as an officer, director or manager" for a business concern. In the case of a PLLC formed for the purpose of engaging in the practice of law, the Commission also notes that under Canon 5F, judges are prohibited from engaging in the practice of law and thus should not serve as a manager of an entity created solely for that purpose.

References:

Canon 5C and Canon 5F of the North Carolina Code of Judicial Conduct
In re Belk, 364 N.C. 114, 691 S.E.2d 685 (2010)
Formal Advisory Opinion No. 2009-01