

Opinion No. 04-02

June 15, 2004

Topic: Judge serving on the board of directors of a not-for-profit hospital.

DIGEST: A judge may serve on the board of directors of a not-for-profit hospital unless: (1) the judge is assigned to a call where the hospital regularly appears; or (2) the hospital "will be regularly engaged in adversary proceedings in any court."

REFERENCES: Illinois Supreme Court Rules 65(b)(1)

FACTS

A judge has been asked to serve on the board of directors of a not-for-profit hospital. The directors do not receive any remuneration for their volunteer work.

QUESTION

May the judge serve as an unpaid director of a not-for-profit hospital?

OPINION

A judge may serve as an unpaid member of the board of directors of a not-for-profit hospital unless the judge is assigned to a call where the hospital regularly appears or the hospital "will be regularly engaged in adversary proceedings in any court".

Supreme Court Rule 65 (B)(1) states:

A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve **if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court. (emphasis supplied)**

A question arises as to what constitutes "proceedings that would ordinarily come before the judge". If the judge is assigned to a call where the judge hears collection cases and the hospital routinely files suits against patients that are heard in her courtroom, the judge should

not accept the appointment as a director. The judge should also consider the impact on the court of the judge's inability to hear cases involving the hospital, should the judge accept the appointment to the hospital board.

The question still remains under S.Ct. Rule 65 (B)(1) as to whether the hospital will be "regularly engaged in adversary proceedings in any court." The possibility or actuality of a medical malpractice case does not constitute being "regularly engaged in adversary proceedings in any court". The Committee believes that a judge may accept a director position notwithstanding the existence of isolated medical malpractice litigation.

However, before accepting a position as a director on the hospital's board, the judge must also determine whether the hospital is regularly engaged in litigation, i.e. "adversary proceedings in any court".

In addition, the likelihood of organizations being regularly involved in proceedings before the judge, or being regularly engaged in adversary proceedings before any court, may change over time. The judge should therefore regularly reexamine the activities of the organizations the judge is affiliated with to make sure it is proper for the judge to continue those affiliations. The Commentary [1] to Canon 4 (C) (3)(a) of the ABA Model Code of Judicial Conduct (2002) states as follows:

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

CONCLUSION

A judge may serve as an unpaid director of a not-for-profit hospital unless: (1) the hospital is engaged in proceedings that ordinarily come before the judge; or (2) the hospital is regularly engaged in adversary proceedings in any court. Because hospitals may be regularly engaged in adversary court proceedings, involving collection and other matters, the judge must look closely at the hospital whose board the judge is considering serving on. If the hospital is regularly engaged in adversary proceedings in any court, Supreme Court Rule 65 (b)(1) bars the judge from serving on that hospital's board.