



REPORT (CONSULTATION 5/19), OF 08 APRIL 2019.

INTEGRITY AND APPEARANCE OF IMPARTIALITY. PUBLICATION OF A WORK CREATED BY A JUDGE IN A PUBLICATION BELONGING TO A PROFESSIONAL WHO ACTS AS AN OFFICIAL RECEIVER IN THE COURT OF THE CONSULTOR.

I. CONSULTATION

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II. OBJECTIVE OF THE CONSULTATION

1. The consultation formulated raises the question of whether it is in accord with the Principles of Judicial Ethics for a judge, who has written a work of fiction, to accept the offer to publish it from a publisher who he knows for being an official receiver, whose name has appeared in the press due to controversial information, and for having been his teacher in a legal centre.

2. The Principles of Judicial Ethics we consider to be relevant, to a greater or lesser extent, are the following:

Principle 16. *Impartiality also imposes the duty to avoid conduct that, within or away from the proceedings, could put them in question or prejudice public trust in justice.*

Principle 17. *Judges must endeavour to ensure the upholding of the appearance of impartiality in coherence with the essential nature that material impartiality has for the exercise of jurisdiction.*

Principle 29. *A judge should be aware that exercise of the jurisdictional function presupposes requirements that do not apply to other citizens.*

III. ANALYSIS OF THE QUESTION

3. We reiterate that set out in precedent reports in the sense that the Judicial Ethics Committee makes an interpretation of the ethics principles contained in the Text,



Judicial Ethics Committee

expresses its opinion and alerts of the situations that could influence the ethics principles in order to clarify the doubts that may be raised among those that the Principles of Judicial Ethics are destined for.

However, in any event, it corresponds to each judge to undertake his or her personal ethical assessment on any case in fact and act in accordance thereof.

4. According to the legislation in force, commercial court judges appoint official receivers. There may be some creditor bankruptcies wherein, due to the importance of the assets and liabilities, the remuneration holds considerable relevance. This discretion of the judge to make appointments, which in some cases may involve considerable financial yield for the appointed receiver, requires the application of extreme prudence in the relationship of these professionals, in order to avoid muddying the appearance of impartiality and integrity on the part of the judge. This appearance may be affected if the judge directly or indirectly perceives a favour or benefit that could be seen by others as compensatory.

The foregoing consideration can be extended to the discretionary appointment of experts or auxiliary personnel when the remuneration is highly significant.

5. In this case, although the judge making the consultation appoints by list order, it so happens that a receiver, who owns a small publishing company and has offered to publish a work of fiction, was chosen by discretion to issue a report in which he obtained considerable income.

6. Some Judges in Spain have written fictitious works, and this has also occurred in other European Union countries where a number have had great success. Artistic and literary production and creation, as is the case for science and technology, are activities permitted to judges and magistrate-judges, as expressed by Article 389.5 LOPJ, although they must avoid dealing with matters directly or indirectly related to their own judicial activity.

7. In order for the judge to be able to assess to what point accepting the offer received for the publication of his novel can affect his appearance of impartiality and integrity, he should ask himself if, due to the concurrent circumstances it could be seen as a direct



or indirect compensation for the appointment made, along with existing alternatives for publication.

8. The publication of an artistic or scientific work in the present moment is not just carried out via traditional publishing houses, large or small. The existence of new self-publishing print companies is a novel, but quite widespread fact; in other words, in the traditional paper format, for authors who wish to maintain control over their publishing rights without intermediaries, literary agents or publishers. Some of these publishers are also committed to digital or print distribution of the work, whereas others limit themselves to the projection of self-publication in digital format (e-book).

IV. CONCLUSION

In view of the foregoing, we issue the following opinion.

i) The publication of works of fiction by members of the judicial service, without initially affecting the principles of judicial ethics, falls within the artistic freedom of creation. Despite this, attention should be paid to the publishing medium used in order to avoid a perception that compromises the integrity and appearance of impartiality on the part of the judge, both before the public in general and receivership professionals, in particular.

ii) The discretionary appointment of an official receiver who may earn substantial fees for such an appointment could create the appearance of the publication of the work being the result of special attention, a gift or courtesy.

iii) It falls on the judge to discern whether his integrity and appearance of impartiality are affected by such a publication in the publishing company owned by the professional inscribed in the list of official receivers, taking into consideration the existence of other alternatives for publication.