

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 87-014

[Withdrawn- by Opinion 98-3 on Apr. 3, 1998]

SYLLABUS: Referees are considered judges for purposes of complying with the Code of Judicial Conduct. In this regard, part-time referees may not practice before the court division on which they serve or before the judge or judges to whom they owe their appointment. However, part-time referees serving the domestic relations division of common pleas court may practice law before other judges in the general, probate and juvenile divisions of that court so long as they avoid the appearance of impropriety.

TO: Judge Michael J. Voris

FROM: The Board of Commissioners on Grievances and Discipline of the Judiciary

DATE: June 22, 1987

We have before us your request for our informal advisory opinion on whether part-time domestic relations referees may practice law in the general, probate and juvenile divisions of the common pleas court.

At the outset, it should be stated that referees are officers of the judicial system performing judicial functions and therefore are considered judges for the purposes of complying with the Code of Judicial Conduct (the Code). Code of Judicial Conduct, Compliance Sec. (1982).

More specifically, part-time referees are considered part-time judges under Compliance Section (A) of the Code which states in part: "[a] part-time judge: . . . should not practice law in the court on which he serves or in any court subject to the appellate jurisdiction of the court on which he serves . . ." Code of Judicial Conduct Compliance Sec. A (2) (1982). It is our opinion that the language of Compliance Section A (2) allows part-time referees to practice in any court of law except the specific division in which they serve as referee. However, a part-time referee may not practice "in the court in which the judge or judges to whom the referee owes his appointment presides." OSBA Formal Ethics Op. 34 (1981).

As previously stated, referees are considered judges and must comply with the Code of Judicial Conduct as well as the Code of Professional Responsibility. Therefore, a referee must avoid even the appearance of impropriety. Code of Judicial Conduct Canon 2 (1973), Model Code of Professional Responsibility DR 9-101 (1985). Furthermore, a lawyer may not imply that he or she is able to improperly influence any tribunal. Model Code of Professional Responsibility DR 9-101(c) (1985), Code of Judicial Conduct Canon 2(B) (1973).

In conclusion, it is our opinion, and you are so advised that part-time domestic relations referees in a court of common pleas may practice law in other divisions of the court of common pleas provided they do not practice before the judge to whom they owe their appointment and avoid the appearance of any impropriety.

This opinion is advisory in nature, is based upon the facts as presented and is limited to questions arising under the Code of Judicial Conduct.

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Secretary
Board of Commissioners
on Grievances & Discipline
of the Judiciary