

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 87-022**

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*

*[Modified by Op. 2005-4 on April 15, 2005]*

*[Not current-subsequent rule amendments to Canons 1 through 6, Ohio Code of Judicial Conduct, eff. May 1, 1997.]*

**SYLLABUS:** Law partners or associates of a part-time judge are precluded from practicing law in the court on which the part-time judge serves. Furthermore, a judge should disqualify himself from any proceeding where a relative, within the third degree of relation, is a lawyer to the proceeding.

TO: Lorene G. Johnston, Esq.

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

DATE: June 22, 1987

We have before us your request for our opinion on whether father and son law partners can serve as Municipal Court Judge and City Law Director respectively within the same county. Specifically, you inquire whether:

- 1) the sole candidate for city law director can run for that office knowing that he must prosecute all matters for the city in the municipal court where his law partner/father is judge?
- 2) if a conflict does exist, is it only because the judge is his father or only because the judge is his law partner, or both?
- 3) can any conflict simply be resolved by terminating the partnership, hiring an assistant, or simply having the judge step down on each and every case where there is an alleged conflict?

In regard to your first question, there is nothing in the Code of Professional Responsibility which precludes a law partner/son of a part-time municipal court judge from running for city law director. However, a part-time judge, his law partners and members of his firm may not practice 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 Section A(2) (1982). See e.g., Committee on Professional Ethics, State Bar of Wisconsin Op. E-85-1 (1985). Therefore, the law partner/son of a part-time municipal court judge may not practice before his father as judge. *Id.* In addition, under Canon 3C of the Code of Judicial Conduct, a judge should disqualify himself from any proceeding where a relative, within the third degree of relation, is a lawyer to the proceeding. Code of Judicial Conduct, Canon 3C(1)(d)(ii) (1982). Clearly, a parental relationship would preclude a judge from sitting on a case where his or her son or daughter were a lawyer to the proceeding.

In regard to your second question, we believe a conflict of interest exists both because of the father/son relationship and the fact that the two men are law partners. Thus, dissolving the partnership would only eliminate half the problem. Again, the judge should still disqualify himself from any proceeding in which his son is a lawyer. Code of Judicial Conduct, Canon 3C(1)(d)(ii)(1982). Furthermore, the ABA, in an opinion on this subject, has stated: "[i]f conflicting obligations in fact exist and cause interference with the judge's devotion to his judicial duties, then he must choose between the two positions and forego one or the other." ABA Comm. on Ethics and Professional Responsibility Informal Op. C-706 (1963).

Although your third question has already been partially answered above, it bears repeating. The conflict would not be totally resolved by terminating the law partnership, for the father/son relationship would still exist. In addition, if the city law director hired an assistant, he or she would be tainted by the conflict given the fact that as an assistant, he or she would report to, work directly for and be under the direction and control of the judge's son. Under DR 9-101 (C) of the Code, lawyers in Ohio must avoid even the appearance of impropriety. Model Code of Professional Responsibility DR 9-101 (C) (1985). Therefore, hiring an assistant would not solve the problem because an assistant city law director appearing before the law director's father as judge might appear improper. Having the judge step down from each and every case where there is an alleged conflict would resolve the problem.

In conclusion, it is our opinion, and you are so advised, that a conflict of interest exists where a father/part-time municipal judge hears cases prosecuted by his law partner/son as city law director. The conflict arises out of their relationship as father and son and as law partners. In addition, the court may also recuse an assistant city law director when it appears reasonably necessary to insure the proper administration of justice and/or public confidence in the judicial system.

**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.**

James W. Mason, Esq.  
Secretary  
Board of Commissioners  
on Grievances and Discipline  
of the Judiciary