

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

41 SOUTH HIGH STREET-SUITE 3370, COLUMBUS, OH 43215-6105  
(614) 644-5800 FAX: (614) 644-5804

OFFICE OF SECRETARY

## **OPINION 87-023**

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*

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

**SYLLABUS:** During a campaign for judicial office it is unnecessary for an incumbent judge to recuse himself from proceedings where his opponent represents one of the parties, unless the judge's impartiality might reasonably be questioned. The judge's impartiality is less likely to be questioned where a member of his opponent's law firm represents one of the parties.

TO: Judge Phil W. Campbell, Van Wert Municipal Court

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

DATE: June 22, 1987

We have before us your request for our opinion on whether you, as incumbent judge, are disqualified to hear cases in which your opponent in the upcoming election or the members of his firm represent one of the parties. This issue was brought to your attention when your opponent sent you a letter requesting that all cases involving himself and members of his firm be assigned to an acting judge until the fall election. You are concerned that, given the small number of attorneys in your area, your automatic disqualification for all cases involving members of your opponent's firm would distort judicial administration in your county and cause undue expense to your city.

Whether or not you are disqualified from any proceeding in your court is determined under the Code of Judicial Conduct (the "Code"). Under the Code, a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Code of Judicial Conduct Canon 3C (1)(1982). The framers of the Code adopted this general policy for disqualification with the intention that, "[a]ny conduct that would lead a reasonable person knowing all the circumstances to the conclusion that the judge's impartiality might reasonably be questioned is a basis for the judge's disqualification." E. W. Thode, Reporter's Notes to Code of Judicial Conduct 60 (1973). In addition, any appearance of impropriety which raises reasonable questions concerning the judge's impartiality would fall within the scope of the general standard set forth in Canon 3C(1). Id. at 61.

In regard to your opponent requesting your recusal, we believe that decision should be made by the person on the bench and not the person before the bench. In addition, we agree with the ABA Committee's finding that nothing in the Code of Professional Responsibility prevents lawyers from appearing before judges, where the judge has not disqualified himself. ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1306 (1974). Whether or not the attorney represents his client for any reason is a matter decided by the individual attorney and his or her client.

Based on the foregoing, it is our opinion that, as long as your impartiality as judge cannot reasonably be questioned, it is proper for you to hear cases in which your opponent in the upcoming judicial election or members of his firm are representing parties in the cases.

**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 & Discipline  
of the Judiciary