

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 87-036

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[Withdrawn- by Opinion 98-3 on Apr. 3, 1998]

SYLLABUS: A part-time referee should not practice law in the court on which he or she serves. A part-time referee for a division of the court of common pleas may practice law in the other divisions of the court provided he does not practice before the judge or judges to whom the referee owes his appointment. Members of the part-time referee's law firm may not appear before their colleague as referee, but may appear before another judge or referee in the same division.

OPINION: We have before us your request for our opinion concerning part-time referees who practice law. You state in your request that you are a Judge of the Court of Common Pleas, responsible for the Probate and Juvenile Divisions. Your first question is whether the part-time referee you intend to appoint to the Juvenile Division of the Court of Common Pleas, and members of his firm, will be able to continue to practice in the Probate Division under the Code of Judicial Conduct and/or the Code of Professional Responsibility.

It is our opinion that, under the Code of Judicial Conduct, a part-time referee in the Juvenile Division may practice in other Divisions of the Court of Common Pleas. However, allowing the part-time referee to practice in any court before the judge who appointed him would appear improper and therefore is proscribed under the Codes of Judicial Conduct and Professional Responsibility. Code of Judicial Conduct Canon 2, Code of Professional Responsibility DR 9-101. In addition, the Ohio State Bar Association has stated that a part-time referee may not practice in the court in which the judge or judges to

whom he owes his appointment presides. OSBA Ethics Op. 34 (1981). Therefore, a part-time referee of the Juvenile Division which you have appointed may not practice in the Probate Division before you. Members of the part-time referee's law firm, however, may continue to practice in the Probate Division before you, so long as you have not disqualified yourself for any reason. ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1306 (1974).

We agree with the two assumptions you have made in your request letter. A part-time referee is considered a part-time judge for purposes of complying with the Code. Code of Judicial Conduct Compliance Sec. A. Under Canon 6(F) and Compliance Section A (2) of the Code, a part-time judge may not practice law in the court on which he serves. Thus, a part-time referee in the juvenile division may not practice law in that division. In addition, a part-time referee may not hear cases in which any member of his or her law firm represents one of the parties, in that the referee's impartiality might reasonably be questioned. Code of Judicial Conduct Canon 3C(1).

Your second question addresses the situation where members of a referee's law firm wish to practice in the Juvenile Division before another referee or judge. It is our opinion that members of the referee's law firm may practice in the Juvenile Division of the Court of Common Pleas before another referee or judge. In this regard, the ABA has held 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 an attorney represents his or her client for any reason should be resolved by the individual attorney and the client.

Nonetheless, members of the part-time Juvenile Division referee's law firm who practice before another referee or judge in that Division may be creating a problem for the sitting judge or referee. For instance, under the Code a judge or referee should disqualify himself from any proceeding where his impartiality might reasonably be questioned. Code of Judicial Conduct Canon 3C(1). Therefore, if a substitute referee or judge's impartiality might reasonably be questioned in a case because one of the lawyers is affiliated with the juvenile division's appointed referee, then that referee or judge should disqualify himself. In addition, both judges and lawyers must

avoid even the appearance of impropriety. Code of Judicial Conduct Canon 2, Code of Professional Responsibility DR 9-101.

In conclusion, it is our opinion, and you are so advised, that a part-time, Common Pleas Court Juvenile Division referee and members of his firm may practice in the Probate Division of the Common Pleas Court. However, a part-time referee may not practice before the judge who appointed him referee. Members of the part-time referee's law firm may not appear before their colleague as referee but may appear before another judge or referee in the juvenile division.

This is an informal, non-binding advisory opinion, based upon the facts as presented and limited to questions arising under the Code of Judicial Conduct.

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