

# *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 88-5**

Issued: April 25, 1988

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*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 1-6, Ohio Code of Judicial Conduct, eff. May 1, 1997]*

**SYLLABUS:** An acting judge appointed by the judge of a municipal court pursuant to Ohio Rev. Code §1901.10 may not hear cases where one of the lawyers involved is related, within the third degree as defined in Canon 3 of the Code of Judicial Conduct, to the appointing judge.

**OPINION:** We have before us your request for an informal advisory opinion on whether an acting judge appointed by you as Municipal Court Judge may hear cases in which your son is a lawyer for one of the parties. In your request letter you indicate that you are the only judge in your Municipal Court and that you have four or five substitute judges that you draw from when there appears to be a conflict of interest, or if you are absent or on vacation.

An acting judge is subject to the Code of Judicial Conduct while sitting on the bench with the exception of Canon 5C(2), (3), D, E, F, and G, and Canon 6C. Code of Judicial Conduct Compliance §B.

Although there is nothing in the Code specifically requiring an acting judge's disqualification in a case in which the appointing judge's son is representing one of the parties, all judges should avoid the appearance of impropriety. Code of Judicial Conduct Canon 2. In addition, "[a] judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned." Code of Judicial Conduct Canon 3C(1). It is our opinion that an acting judge hearing cases where one of the attorneys is the son of the judge who appointed the acting judge would be creating the appearance of impropriety and therefore should be avoided.

Furthermore, under Canon 2(A), a judge should conduct himself at all times in a manner that promotes public

confidence in the integrity and impartiality of the judiciary. The facts as presented in this request, if acted upon, would not promote the public confidence in the impartiality of the judiciary.

However, if a visiting judge were appointed by the Chief Justice of the Ohio Supreme Court through his assignment powers, the visiting judge would not be “tainted” as he would if the municipal court judge had appointed him as acting judge. In other words, a visiting judge appointed by the Chief Justice would be able to hear cases which he would be unable to hear because of the appearance of impropriety created by an appointment from the actual judge. Furthermore, an appointment by the Chief Justice would also insure that the appointed judge is covered under the judicial liability policy the Ohio Supreme Court holds for judges throughout the State. Acting judges not appointed by the Chief Justice of the Ohio Supreme Court are not covered under this judicial liability policy.

In conclusion, it is our opinion and you are so advised that, an acting judge appointed by the municipal court judge should disqualify himself from a proceeding in which his impartiality may be questioned including cases in which the municipal court judge’s son is acting as a lawyer in the proceeding.

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