

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 88-020

Issued August 12, 1988

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

[See O.A.G. Op. 94-079, Nov. 29, 1994]

SYLLABUS: Under the Code of Professional Responsibility, a County Commissioner is not specifically precluded from appearing in the County's Court of Common Pleas provided doing so does not create the appearance of impropriety. If a lawyer is required to decline employment then his or her partner or associate is also precluded from accepting such employment.

OPINION: We have before us your request for an advisory opinion on whether it would be a conflict of interest for a County Commissioner to practice law in the Court of Common Pleas of the same county. In your request you ask whether you and your law partner may practice criminal defense law or accept appointments for criminal cases and whether you and your law partner may practice civil law in the Court of Common Pleas.

Under DR 8-101 of the Code of Professional Responsibility,

[a] lawyer who holds public office shall not: ...use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest. ...use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client...

In addition, EC 8-8 of the Code advised that a lawyer who is a public officer should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties. Canon 9 of the Code also encourages lawyers to avoid even the appearance of impropriety.

Under the Ohio Revised Code, Section 102.04(A) a county commissioner is precluded from receiving compensation for services rendered to other departments, boards, commissions, and the like. However, this provision specifically excludes a court of law from the ban. In a 1975 opinion by the Ohio Ethics Commission interpreting Section 102.04(B) of the Revised Code, it was held that a county commissioner, who is also an attorney, may represent persons in criminal cases which are before a court within the county in which he serves as commissioner. Ohio Ethics Commission, Op. 75-018 (1975). Although the courts involved in that opinion were the juvenile and municipal courts, we believe the opinion also applies to the Court of Common Pleas.

We believe that the same decision making process should be utilized when determining whether a conflict of interest exists for both criminal and civil cases. In other words, we see no distinction between a County Commissioner appearing as counsel before the Court of Common Pleas for civil cases or criminal cases. Furthermore, for purposes of a conflict determination, we see no distinction between criminal work that is either court appointed or private representation. We suggest, however, that as County Commissioner you abstain from voting on any matters which have a direct effect on your private practice.

The issue of whether your partner may handle cases in the Court of Common Pleas is addressed in DR 5-105(D) which states that, if a lawyer is required to decline employment then his or her partner or associate is also precluded from accepting such employment. However, this imputed disqualification is now successfully being avoided by the use of “Chinese Walls” or other screening devices which rebut the presumption of disqualification by partners and associates of the “infected lawyer.” See, e.g., Manning v. Fort Deposit Bank, No. 86-6239 (6th Cir. 6/9/98).

In conclusion, it is our opinion and you are so advised that a County Commissioner is not precluded, under the Code of Professional Responsibility, from appearing in the county's Court of Common Pleas. However, a County Commissioner may not appear before the Court of Common Pleas if doing so would create the appearance of impropriety. Our opinion does not make a distinction between appearing in the Court of Common Pleas in civil or criminal cases. Under the Code of Professional Responsibility, partners of County Commissioners would be disqualified from appearing in cases in which the Commissioner is disqualified.

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

James W. Mason, Esq.
Secretary Board of
Commissioners