

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 2005-4 **Issued April 15, 2005**

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

SYLLABUS: In counties having more than one county court judge, it is proper for law partners and associates of a county court judge to appear in county court before another county court judge, regardless of whether or not the county court is divided into areas of separate jurisdiction. This Opinion modifies Opinions 94-2, 87-029, and Op. 87-022.

OPINION: This opinion addresses whether partners and associates of a part-time county court judge may practice in the county court before another county court judge. For purposes of this opinion, the term “law partners and associates” is used, but the opinion applies as well to attorneys who are employees, shareholders, and members of legal professional associations and limited liability companies formed for the practice of law.

In counties having more than one county court judge, is it proper for law partners and associates of one county court judge to appear in county court before another county court judge?

Practice of law by county court judges

In Ohio, county court judgeships are part-time positions. Ohio Rev. Code Ann. §1907.11(A) (West Supp. 2004). Some Ohio counties have only one county court judge, some have more than one. Ohio Rev. Code Ann. §1907.11(A) (West Supp. 2004).

Part-time county court judges are permitted to practice law. Ohio Rev. Code Ann. §1907.16(B) (West Supp. 2004) and Compliance with the Ohio Code of Judicial Conduct, Section (B)(1).

But, the practice of law by part-time judges is limited. Under the Ohio Code of Judicial Conduct, a part-time county court judge “[s]hall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other related proceeding.” Compliance with the Ohio Code of Judicial Conduct, Section (B)(2).

A part-time judge is described as “a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. Compliance with the Ohio Code of Judicial Conduct, Section (B)(1). Ohio law states “[a] judge of a county court shall be disqualified from the practice of law only as to matters pending or originating in that county court during the judge’s term of office.” Ohio Rev. Code Ann. §1907.16(B) (West Supp. 2004).

In counties having more than one county court judge, the county court may be divided by the presiding judge into areas of separate jurisdiction. Ohio Rev. Code Ann. §1907.15 (A)(1) and (2) (West Supp. 2004). But, even if a county court is divided into areas of separate jurisdiction, the jurisdiction of each county court judge is coextensive with the boundaries of the county court district. Ohio Rev. Code Ann. §1907.15(B) (West Supp. 2004). In *Thomas v. Corrigan* (1999), 135 Ohio App.3d 340, 345, the Eleventh District Court of Appeals stated “[a]lthough R.C. 1907.15(A)(1) refers to each judge’s area as an area of separate jurisdiction, the language of R.C. 1907.15(B) clearly grants each judge jurisdiction to hear cases with territorial jurisdiction throughout the county court district.” [Prior to July 1, 1997, Section 1907.15(B) stated “[t]he jurisdiction of each county court judge shall be limited to his [her] area of jurisdiction. Id.]

Because a county court judge’s jurisdiction is coextensive with the boundaries of the county court district, rather than limited to an area of separate jurisdiction, each county court within the county court district is considered “the court on which the judge serves” for purposes of the Compliance Section of the Ohio Code of Judicial Conduct.

Thus, a county court judge is not permitted to practice law in the court on which he or she serves or in any county court within the county court district. This view was expressed in Op. 87-029 (1987) advising that “[a] county court judge may not practice in the county court in which he resides, whether or not there are separate area of jurisdiction in the county court” and as stated in the Syllabus of that opinion “[i]f the county court is divided into geographic areas of separate jurisdiction, the county court judges are precluded from practicing law in any of the districts of that county court.” Ohio Sup.Ct., Bd. Commrs. Grievances & Discipline, Op. 87-029 (1987).

Further, county court judges may not hear cases in which their law partner or associates appear as counsel. Ohio Sup.Ct., Bd. Commrs. Grievances & Discipline, Op. 87-029 (1987). A judge is required to disqualify from a proceeding in which his or her impartiality might reasonably be questioned, including but not limited to instances where a lawyer with whom the judge previously [or currently] practices law served during the association as a lawyer concerning the matter. Canon 3(E)(1) and 3(E)(1)(b) Ohio Code of Judicial Conduct.

Practice of law by partners and associates of county court judges

Because part-time county court judges are permitted to practice law, questions arise as to what restrictions upon the practice of law are placed upon the judge's partners and associates.

Opinion 87-022 does not address questions regarding practice by law partners before a *county court* but addresses questions related to practice of law in a *municipal court* by a law director whose law partner/father is the municipal court judge. But, the Syllabus of Opinion 87-022 broadly states that “[l]aw partners or associates of a part-time judge are precluded from practicing law in the court on which the part-time judge serves.” In the opinion, the Board refers to Section A(2) of Compliance with the Code of Judicial Conduct and states “a part-time judge, his [her] law partners and members of his [her] firm may not practice in the court on which he [she] serves or in any court subject to the appellate jurisdiction of the court on which he [she] serves.” Ohio Sup.Ct., Bd. Commrs. Grievances & Discipline, Op. 87-022 (1987). That is no longer the Board's view. See Ohio Sup.Ct., Bd. Commrs. Grievances & Discipline, Op. 98-3 (1998).

The Board now modifies Opinion 87-022. The Board disavows the broad statement in the Syllabus and within the opinion that law partners and associates are precluded from practicing law in the court on which a part-time judge serves.

In Opinion 87-029, the Board declined to answer whether lawyers who practice law with a county court judge may appear before another county court judge. The Board explained that “[w]hether or not an attorney represents his [her] client for any reason is a matter decided by the individual attorney and his or her client.” Ohio Sup.Ct., Bd. Commrs. Grievances & Discipline, Op. 87-029 (1987).

The Board now modifies Opinion 87-029. The modification is that Board will provide the guidance it declined to offer--lawyers who practice law with a county court judge may appear before another county court judge.

In Opinion 94-2, the Board advised that “[t]he partners and associates of a part-time county court judge may not practice law in the county court where the judge sits by assignment until the termination of the assignment.” In an attempt to clarify restrictions on the practice of law by law partners or associates of a part-time county court judge, the Board set forth three premises. “First, partners or associates of a part-time county court judge may not practice law before a judge who is their partner or associate. . . . Second, when a county court is divided into areas of separate jurisdiction, the Board sees no impropriety in the partners or associates of a county court judge appearing before other judges in the separate areas of jurisdiction. . . . Third, in county courts not divided into areas of separate jurisdiction, it would be improper for the partners or associates of a part-time

judge to appear before any judge of that court.” Ohio Sup.Ct., Bd. Commrs. Grievances & Discipline, Op. 94-2 (1994).

The Board now modifies Op. 94-2. The modification is that partners and associates of a part-time county court judge may practice law in a county court where the judge is sitting by assignment, provided it is not before the judge who is their partner or associate.

The defining point is not whether the court is divided into separate areas of jurisdiction, for divided or not, each county court judge’s jurisdiction is co-extensive with the boundaries of the county court district. The defining consideration is whether appearances of law partners or associates of a part-time county court judge before another judge of the county court creates an appearance of impropriety or of improper influence before a tribunal. The Board’s view is that an appearance of impropriety or improper influence does not occur when a county court judge’s partners or associates appear before another county court judge. This view is consistent with the Board’s view in Opinion 98-3 that law partners or associates of a part-time municipal or common pleas court magistrate may practice law in the court on which the part-time magistrate serves, so long as the partners or associates do not appear before the part-time magistrate. Ohio Sup.Ct., Bd. Commrs. Grievances & Discipline, Op. 98-3 (1998).

Nevertheless, individual facts and circumstances must be considered. If a county court judge, not otherwise disqualified under Canon 3(E), decides that he or she cannot be impartial when partners or associates of another county court judge appear in court, the judge should disqualify himself or herself under Canon 3(E)(1) of the Ohio Code of Judicial Conduct.

Conclusion

In conclusion, the Board advises that in counties having more than one county court judge, it is proper for law partners and associates of a county court judge to appear in county court before another county court judge, regardless of whether or not the county court is divided into areas of separate jurisdiction. This Opinion modifies Opinions 94-2, 87-029, and Op. 87-022.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney’s Oath of Office.