

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 89-10

Issued April 14, 1989

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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: A judge must disqualify himself or herself from all proceedings in which any person within the third degree of relationship appears as a party or as a lawyer before the judge. However, if the judge discloses on the record the basis of his disqualification and the parties and lawyers involved all agree in writing that the relationship is immaterial, then the judge may participate in the proceeding.

OPINION: We have before us your request for an advisory opinion regarding the propriety of you, as a judge, hearing criminal cases when one of the parties is represented by your brother-in-law. In your request you indicate that the City Law Director has consented to your involvement in such cases but that your brother-in-law has objected in certain instances.

The Code of Judicial Conduct directly addresses such a situation, Canon 3C (l) (d) (ii) states that:

judge should disqualify himself . . . where . . . he or his spouse, or a person within the third degree of relationship to either of them . . . is a party to the proceeding or . . . is acting as a lawyer in the proceeding.

Examples of a third degree relationship are given in the commentary and they include the brother of the judge or the judge's spouse. Persons having such a relationship are explicitly barred from presiding over any action involving each other.

However, to prevent undue hardship that might arise from such blanket disqualifications a waiver may be invoked. Code of Judicial Conduct, Canon 3D. In order to qualify under this provision, the judge must disclose on the record the basis of his disqualification. The parties and the lawyers must all agree in writing that the judge's relationship is immaterial. If both of these requirements are met, then the judge may participate in the proceeding.

In conclusion, it is our opinion that you must disqualify yourself on the record at the outset of any proceeding in which your wife's brother appears as counsel. Such a relationship falls squarely within the third degree relationship prohibition. However, if the parties and their lawyers agree in writing that your family relationship is immaterial then you may conduct the proceeding. The parties and their counsel must independently execute such an agreement and the agreement must be made a part of the record. Code of Judicial Conduct, Canon 3D.

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