

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 89-32**

Issued October 13, 1989

*Withdrawn by Adv. 2017-02*

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*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:** It is the ethical duty of a judge to report lawyer misconduct, of which the judge may become aware, under Canon 3(B) (3) of the Code of Judicial Conduct and DR 1-103 of the Code of Professional Responsibility. A judge's filing of a disciplinary complaint against a lawyer does not, by itself, disqualify the judge from hearing any cases involving that lawyer.

**OPINION:** We have before us your request for an opinion on the following question: when a judge files a complaint concerning an apparent violation of the Code of Professional Responsibility by an attorney, does that act alone disqualify the judge from hearing any cases involving that attorney? You also inquire whether the parties represented by the attorney in question must be informed of the pending disciplinary complaint and how to effectuate any disclosure.

There is no question that judges have an ethical duty to report lawyer misconduct under Canon 3 (B) (3) of the Code of Judicial Conduct which specifically states:

[a] judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware,

In addition, under DR 1-103 of the Code of Professional Responsibility, a judge is obligated to report any unethical conduct by an attorney. This duty is absolute and is in no sense evidence of partiality by the judge. See, Blacknell v. State, 502 N.E.2d 899 (Ind., 1987). The filing of a complaint against an attorney by a judge is not, standing alone, grounds for disqualifying the judge from hearing any cases involving the attorney in question. Id.

In our view, the filing of a disciplinary complaint by a judge against an attorney does not, per se, require notifying the

parties represented by the attorney in question. In general, all proceedings and documents relating to the review and investigation of disciplinary complaints are private until a formal written complaint is certified by a probable cause panel. See, Gov. Bar R. V § 43.

In conclusion, it is our opinion and you are so advised that the disqualification of a judge is not automatic when the judge has filed a disciplinary complaint against an attorney appearing in the judge's courtroom. This does not mean that the judge cannot be disqualified if the totality of the circumstances in a particular case require it.

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