

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 89-34

Issued November 2, 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[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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: Where the judge is a party in a pending lawsuit the judge must recuse himself or herself from any cases where a litigant is also represented by the judge's attorney. The necessity for recusal in this instance lasts at least as long as there is an attorney-client relationship with the judge. If a judge is represented by the prosecutor's office or attorney general's office, the judge may not hear cases where the particular attorney representing the judge is also representing a litigant before the judge. Other members of the prosecutor's office or the attorney general's office appearing before the judge would not require the judge's disqualification.

Judges should not sit on any case where their impartiality might reasonably be questioned. In certain circumstances the judge should recuse himself or herself from all cases involving the entire law firm of the judge's attorney for judges must also avoid even the appearance of impropriety. Canon 3(D) of the Code of Judicial Conduct provides for the remittal of disqualification in certain circumstances. In less populated jurisdictions, an otherwise disqualified judge may hear a case if no other judge is available to hear the case.

OPINION: We have before us your request for an opinion on whether judges personally involved in litigation must recuse themselves from cases where a party is represented by the judge's private counsel or member of the same law firm. In this request, when judges are sued in their official capacity they are represented by either the county prosecuting attorney's office, the attorney general's office or private local counsel.

Canon 3C of the Code of Judicial Conduct requires a judge's disqualification in proceedings where the judge's impartiality might reasonably be questioned. Moreover, judges must avoid even the appearance of impropriety under Canon 2. In our view, these provisions require a judge's recusal in cases where a litigant is represented by the judge's attorney, at least while the attorney-client relationship exists between that attorney and judge. ABA Committee on Ethics and Professional Responsibility, Informal Op. 1477 (1981).

A judge being represented by an attorney from the prosecutor's or attorney general's office is also precluded from hearing cases where a party is represented by that same attorney. However, a judge's recusal is not required in all cases involving other attorneys from the prosecutor's office or attorney general's office.

In less populated jurisdictions, a "rule of necessity" is essential. This would allow an otherwise disqualified judge to hear a case if no other judge is available to hear the case. ABA Committee on Ethics and Professional Responsibility, Informal Op. 1477 (1981).

Your request also asks whether it would be necessary to comply with Canon 3(D) when a judge does not desire to recuse himself or herself. The answer is yes, a remittal of disqualification must follow the guidelines of Canon 3(D). This Code provision provides for the remittal of disqualification when the parties and their lawyers agree in writing that the judge's interest is insubstantial or his or her relationship is immaterial.

In conclusion, it is our opinion and you are so advised that a judge personally involved in litigation must recuse himself or herself from any case where a litigant is represented by the judge's own attorney. A judge's recusal is required at least as long as there is an attorney-client relationship with the judge. In certain circumstances in order to avoid any appearance of impropriety, a judge may have to recuse himself or herself from cases where partners or associates of the judge's attorney also represent a party before the judge.

If the judge is represented by the prosecutor's office or attorney general's office, the judge may not hear cases where the particular attorney representing the judge also represents a litigant before the judge. Other members of the prosecutor's office or the attorney general's office appearing before the judge would not necessitate the judge's disqualification unless recusal is necessary to avoid any appearance of impropriety. For less populated jurisdictions, an otherwise disqualified judge may hear a case if no other judge is available to hear the case. Judges faced with a potential recusal must not sit on any case where the judge's impartiality might reasonably be questioned. Judges must also avoid even the appearance of impropriety. Canon 3(D) provides for remittal of disqualification in certain circumstances.

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