

# ***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 90-17**

Issued August 17, 1990

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*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 is disqualified from any case where his or her impartiality may reasonably be questioned. Under Canon 3C(1)(d)(ii), a judge must disqualify himself or herself from any case where one of the lawyers is related to the judge or the judge's spouse within the third degree of relationship. Probate judges must comply with this Code provision in all proceedings including the filing and processing of an uncontested estate before the judge.

**OPINION:** We have before us your request for an opinion on whether probate judges are disqualified from proceedings, including the uncontested filing and processing of an estate, where one of the lawyers involved is related to the sitting judge within the third degree of relationship.

Canon 3C (1) (d) (ii), as you indicate in your request, provides:

- (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:
  - . . . (d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person;
  - . . . (ii) is acting as a lawyer in the proceeding . . .

The degree of relationship is defined according to the civil law system and is set forth in the commentary following Canon 3C (3). This rule prevents a client from believing that "special favor and consideration can be obtained in a case through retention of a judge's relative as attorney." Abramson, Judicial Disqualification under Canon 3C of the Code of Judicial Conduct 51 (Am. Judicature Society, 1986).

The Supreme Court of South Dakota censured a judge who frequently allowed his wife to practice law before him in probate and guardianship matters. In re Heuermann, 240 N.W.2d 603 (S.D. 1976).

A concern is that an uncontested matter before the probate judge may become contested as it proceeds through probate court. Furthermore, the probate judge approves the fees to be paid to the lawyer in the uncontested matter. For these reasons and to avoid any appearance of impropriety, a probate judge may not preside over the uncontested filing and processing of an estate by a relative within the third degree of relationship to the judge or the judge's spouse.

In conclusion, it is our opinion and you are so advised that a probate judge is disqualified from presiding over any matters where one of the lawyers is related to the judge within the third degree of relationship.

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