

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 91-23**

Issued October 18, 1991

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*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:** Section 2921.42 (A) (1) of the Ohio Revised Code would prohibit a part-time judge from appointing an attorney in his/her law firm to the position of referee.

**OPINION:** The question presented is whether a part-time judge who practices law may appoint an attorney in his/her law firm as a referee.

Appointments by judges are regulated by The Code of Judicial Conduct and by Ohio Ethics Law and related statutes. Under Canon 3B (4) of the Code of Judicial Conduct, “[a] judge should not make unnecessary appointments. He [she] should exercise his [her] power of appointment only on the basis of merit, eliminating nepotism and favoritism. He [she] should not approve compensation of appointees beyond the fair value of services rendered.” Code of Judicial Conduct Canon 3B(4). Failure of even a few judges to comply with the Canon 3B(4) standard can lower the public’s esteem for the entire judicial system. E. Thode, Reporter’s Notes to the Code of Judicial Conduct 60 (1973).

Although favoritism is not defined in the Code of Judicial Conduct, it is generally defined as “invidious preference and selection based on friendship and factors other than merit.” Black’s Law Dictionary, 548 (5th ed. 1979). Thus, the Canon 3B(4) prohibition against favoritism could apply to appointments by judges of members of one’s law firm.

Another provision of the Code of Judicial Conduct is also applicable to appointments by judges. Canon 2B requires that “[a] judge should not allow his [her] family, social, or other relationships to influence his [her] judicial conduct or judgment.” One state’s ethics committee, citing Canons 1, 2A and 2B, has advised that a part-time judge should not appoint another attorney in his/her firm as a judge pro tem or to a special panel from which a special judge is selected because such appointment would interfere with public confidence in the integrity and impartiality of the judiciary and convey the impression that those attorneys were in a special position to influence the judge. Indiana State Bar Ass’n, Op. 5 of 1978 (1978).

Previously, this Board has advised that it is not improper under Canon 3B(4) for a judge to appoint the spouse of a current court employee to a court position provided the appointment is based on the spouse's qualifications and not on the relationship to the court employee. Ohio Sup.Ct, Bd. of Comm'rs on Grievances and Discipline, Op. 89-1 (1989).

However, the question this opinion addresses need not be answered under the canons because a provision within Ohio Ethics Law is determinative. Under Section 2921.42 (A) (1) of the Ohio Revised Code, no public official shall knowingly "[a]uthorize, or employ the authority or influence of his [her] office to secure authorization of any public contract in which he [she], a member of his [her] family, or any of his [her] business associates has an interest." For purposes of 2921.42 (A)(1), judges are public officials [OHIO REV. CODE ANN. §2921.01(A)], an employment relationship is a public contract [Ohio Ethics Comm'n, Op. 89-015 (1989)], and partners and associates in a law firm with which an official is associated are 'business associates' [Ohio Ethics Comm'n, Op. 89-015 (1989)]. Accordingly, this Board advises that Section 2921.42 (A) (1) of the Ohio Revised Code would prohibit a part-time judge from appointing an attorney in his/her law firm to the position of referee.

The Board also acknowledges that another provision of Ohio Ethics Law may apply to some appointments by judges. Section 102.03(D) of the Ohio Revised Code requires that "[n]o public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him [her] with respect to his [her] duties." This prohibition would apply to value accruing to a family member or business associate, even though the public official does not benefit personally. See Ohio Ethic Comm'n, Op. 88-004 (1988). Thus, Section 102.03 could be violated by the appointments of family members or business associates where the value is of such a character as to manifest a substantial and improper influence upon a judge with respect to his/her duties.

**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. Pursuant to Section 102.08 of the Ohio Revised Code, the requester may reasonably rely on the opinion as it applies to Ohio Ethics Law and related statutes.**