

The Supreme Court of Ohio

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OPINION 2014-1

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Standard for Judicial Disqualification When Counsel Is a Participant in the Judge's Current Election Campaign

SYLLABUS: The mere participation by a lawyer in a judge's current election campaign does not require judicial disqualification when the lawyer has a case before the judge. When a lawyer's campaign activities evidence a substantial political relationship with a judge, disqualification is warranted during the campaign fundraising period. A substantial political relationship between a lawyer and a judge does not require the judge to disqualify himself or herself from cases involving the partners and associates of the lawyer's firm. A judge must disclose a substantial political relationship with a lawyer if seeking a waiver of disqualification, but a lawyer is not required to disclose the relationship to opposing counsel. Should a lawyer serve as a judge's legal advisor during an election campaign, and a lawyer-client relationship exists, the judge must disqualify himself or herself from the lawyer's cases until both the campaign fundraising period and lawyer-client relationship have ended. Advisory Opinion 92-9 is withdrawn.

QUESTIONS PRESENTED:

1. When a lawyer is currently participating in a judge's election campaign:
 - a. Is the judge required to disqualify himself or herself from cases in which the lawyer represents a party?
 - b. Is the judge required to disclose the lawyer's campaign participation to the parties and their counsel in cases involving the lawyer?

- c. Is the lawyer required to disclose his or her campaign participation to opposing counsel in cases assigned to the judge?
2. If a lawyer acts as a judge's legal advisor during an election campaign, is the judge required to disqualify himself or herself from cases in which the lawyer represents a party?

APPLICABLE RULE: Rule 2.11 of the Ohio Code of Judicial Conduct

OPINION:

In preparation for the upcoming judicial campaign season, a lawyer seeks the Board's guidance on judicial disqualification in cases involving lawyers who are participating in the judge's election campaign. The requester has also asked the Board to reexamine Advisory Opinion 92-9, which addresses some aspects of his disqualification questions under the former Code of Judicial Conduct.

Judicial Disqualification and a Lawyer's Campaign Participation

First, the requester asks whether a judge is required to disqualify himself or herself in cases involving lawyer-participants in the judge's campaign, who may also be members of the campaign committee. Under Jud.Cond.R. 4.4(A), a judicial candidate "may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of [the Code of Judicial Conduct]." A candidate for public office in Ohio may only have one campaign committee. R.C. 3517.081. Judicial campaign contributions are directed to the committee because a judicial candidate may not personally receive campaign contributions. Jud.Cond.R. 4.4. "Members of the legal profession, who often are in the best position to gauge the qualifications of candidates for judicial office, are the primary targets of requests to serve on campaign committees and campaign contribution solicitations." *In re Disqualification of Ney*, 74 Ohio St.3d 1271, 1272, 657 N.E.2d 1367, 1368 (1995).

Parties alleging that a judge is "interested in a proceeding pending before the court" or "is related to or has a bias or prejudice for or against a party to a proceeding...or a party's counsel" may file an affidavit of disqualification against the judge. See R.C. 2101.39, 2501.13, 2701.03, and 2701.031. The chief justice rules upon affidavits of disqualification filed against common pleas and appellate court judges while a common pleas court judge decides affidavits of disqualification filed against municipal and county court judges. *Id.* See also Ohio Constitution, Article IV, Section

4.05. Examination of the reported cases reveals that “[a]ffidavits of disqualification involving campaign issues are decided on a case-by-case basis.” *Ney* at 1272, 657 N.E.2d at 1368. However, it has also been the long-standing rule in Ohio that a judge is not disqualified “merely because a party to or lawyer in the underlying case campaigned for or against the judge.” *In re Disqualification of Celebrezze*, 74 Ohio St.3d 1231, 1232, 657 N.E.2d 1341 (1991). *Accord In re Disqualification of Osowik*, 117 Ohio St.3d 1237, 2006-Ohio-7224, 884 N.E.2d 1089; *In re Disqualification of Celebrezze*, 94 Ohio St.3d 1231, 763 N.E.2d 600 (2001); *In re Disqualification of Maloney*, 91 Ohio St.3d 1204, 741 N.E.2d 133 (2000); *Ney, supra*. See generally *Flamm, Judicial Disqualification*, Section 9.5, 249 (2nd Ed. 2007). The Board adopted the prevailing approach in 1992 when it concluded that “[a] judge is not required to disqualify himself or herself when a lawyer who is the judge’s campaign committee co-chairperson or members of the lawyer’s firm appear before the judge.” Ohio Sup. Ct., Bd. of Comm’rs on Grievances and Discipline, Op. 92-9 (April 10, 1992), at syllabus. As the late Chief Justice Moyer more recently articulated when evaluating the allegations of a lawyer who participated in the campaign of a judge’s political opponent: “We elect judges in Ohio, and we must ordinarily assume that an attorney’s or a party’s vocal opposition to the election of a judge will not cause that judge to harbor bias when the attorney or the party later appears before the judge.” *Osowik* at ¶ 6, citing *Flamm, supra*.

Statutory law governs affidavit of disqualification procedure, but a judge’s ethical obligation regarding disqualification is found in the Code of Judicial Conduct (Code). Jud.Cond.R. 2.11 states in pertinent part as follows:

(A) A judge shall disqualify himself or herself in any proceeding in which the judge’s *impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal *knowledge* of facts that are in dispute in the proceeding.

* * *

Jud.Cond.R. 2.11, Comment [1], provides more specific direction on disqualification when a judge’s campaign supporters represent parties in cases before the judge: “A judge’s knowledge that a lawyer, law firm, or litigant in a proceeding contributed to the judge’s election campaign within the limits set forth in Rules 4.4(J) and (K), or publicly supported the judge in the campaign, does not, in and of itself, disqualify the judge.” Reading Comment [1] in the context of Jud.Cond.R. 2.11(A), it appears that the drafters

of the Code concluded that it is not reasonable to question a judge's impartiality based solely upon the participation of counsel in the judge's election campaign. Additionally, the affidavit of disqualification cases cited herein, the Flamm treatise, and Advisory Opinion 92-9 all support the proposition that mere campaign participation does not require disqualification.

Despite the general rule regarding judicial disqualification and a lawyer's campaign participation, we are not willing to fashion a bright-line test regarding the judicial campaign activity of lawyers. That is, there may be situations in which a lawyer's campaign participation requires judicial disqualification. As recognized by Chief Justice Moyer in an affidavit case decided about six weeks after *Osowik*, "when a judge's campaign is still active, any political relationship between the judge and a lawyer who is appearing before the judge certainly deserves close scrutiny" but "[t]he judge's disqualification is warranted only if that political relationship is a substantial one...for attorneys are generally encouraged to support candidates for judicial office, and they often do so." *In re Disqualification of Saffold*, 117 Ohio St.3d 1239, 2006-Ohio-7225, 884 N.E.2d 1091, ¶ 5. In *Saffold*, the presiding judge in a criminal case had named the elected county prosecutor as the honorary co-chairperson of one reelection campaign fundraiser. Disqualification was denied because the prosecutor was not playing a critical role in the campaign or running its daily operation. However, the opinion makes clear that when a lawyer plays an active role in campaign operations or fundraising, a reasonable person would question the judge's ability to remain fair and impartial. *Id.* at ¶ 6. Although the Supreme Court adopted the current Code post-*Saffold*, the "reasonable person's" view of impartiality employed in *Saffold* is the same standard for disqualification contained in Jud.Cond.R. 2.11(A).

Ethics authorities concur in the statements found in *Saffold* regarding a substantial political relationship between a judge and a lawyer. In the chapter entitled "Campaign Support Other Than Money," the Flamm treatise on judicial disqualification states that "where a more specific reason exists for questioning whether a judge might be partial to a party or attorney who politically supported him – as where the level of support exceeds mere campaign participation, a judicial campaign is presently ongoing, or there is an affiliation between the judge and campaign committee members in a joint project lasting for a period of time – a different result [disqualification] may be reached." Flamm, *supra*, Section 9.5, at 250-251. Advisory opinions from other states confirm that a lawyer's campaign involvement, if ongoing and significant, may be grounds for disqualification when the lawyer is practicing before the judge. See N.Y. Jud. Adv. Commt. on Judicial Ethics, Op. 12-28 (Mar. 8, 2012) (disqualification not warranted in case involving political advisor who "did not play an active, significant or

pivotal role in the judge's campaign"); Fla. Sup. Ct., Jud. Ethics Adv. Commt., Op. 2007-17 (Nov. 15, 2007) (each situation must be evaluated on a case-by-case basis; factors include role in campaign, remoteness of the campaign, and nature of political relationship); Wis. Sup. Ct., Jud. Cond. Adv. Commt., Op. 03-1 (Mar. 22, 2004) (disqualification required for a reasonable period of time where lawyer was judge's campaign manager and actively involved in the campaign in a contested election); Fla. Sup. Ct., Jud. Ethics Adv. Commt., Op. 2003-22 (Nov. 18, 2003) (disqualification must be evaluated on a case-by-case basis after considering level of involvement and proximity in time to the campaign); Nev. Std. Commt. Jud. Ethics, Op. JE02-001 (Mar. 14, 2002) (whether lawyer held "high campaign office or position" is relevant to disqualification of judge). A judge's general political connections are also relevant in a judicial disqualification analysis. See *In re Disqualification of Corrigan*, 110 Ohio St.3d 1217, 2005-Ohio-7153, 850 N.E.2d 720 (all county judges disqualified in case involving county commissioner who was a former political party chair and county recorder); *In re Disqualification of Celebrezze*, 105 Ohio St.3d 1241, 2004-Ohio-7360, 826 N.E.2d 301 (all county judges disqualified in case involving "a county officeholder [with] significant personal and professional connections to many judges in the county").

To summarize, mere participation by a lawyer in a current, active judicial campaign does not require disqualification when the lawyer has a case before the judge/candidate. It is publicly understood that judges are elected in Ohio and that lawyers lend support to judges in their election campaigns. Disqualification case law, ethics authorities, and Jud.Cond.R. 2.11, Comment [1], indicate that such support does not create a reasonable question as to the judge's ability to remain fair and impartial. Particularly in a current judicial campaign, though, disqualification must be evaluated on a case-by-case basis if the lawyer's campaign activities evidence the "substantial political relationship" identified in *Saffold*. Factors relevant to determining if a lawyer's campaign activity creates a substantial political relationship with the judge include the length and level of campaign involvement, including whether the lawyer has campaign management responsibilities, the extent of the lawyer's fundraising activities, whether the lawyer's name appears on solicitation letters, emails, and the like, whether the election is contested, and the type of election (statewide, multi-county, or local). A lawyer's title in a judicial campaign may be indicative of a substantial political relationship with the judge, but is not a determining factor in a disqualification analysis. Some campaign titles are honorary, some are bestowed pursuant to statute, and yet others correspond to significant campaign responsibilities. Any political ties between the lawyer and judge occurring outside the campaign relationship are also relevant. After consideration of these factors, if a judge determines that he or she has a substantial political relationship with a lawyer who is connected with the judge's

election campaign, there is a reasonable question concerning the judge's ability to remain impartial in matters involving the lawyer, and disqualification is warranted.

A judge evaluating a political relationship with a lawyer is further advised to consider Jud.Cond.R. 2.11(A)(1), which states that a personal bias or prejudice concerning a lawyer is a specific example of a situation in which a judge's impartiality might be reasonably questioned. Even when a lawyer is a "mere participant" in a judicial campaign, disqualification is required if the judge harbors a personal bias or prejudice for or against the lawyer.

a. Length of Disqualification Period

Again, should a judge conclude that he or she has a substantial political relationship with a lawyer who is involved in both the judge's election campaign and a matter before the judge, disqualification is warranted. A follow-up question is whether disqualification is temporary or permanent. Jud.Cond.R. 2.11 does not specify the duration of a judge's disqualification. The disqualification cases demonstrate that past campaign involvement, without more, will not require disqualification and that current campaign activity requires "close scrutiny." See *Celebrezze, Maloney, Osowik, Saffold*. These cases and the language in Jud.Cond.R. 2.11, Comment [1], weigh against the imposition of permanent disqualification when a lawyer engages in extensive judicial campaign activity. Courts "have [also] been reluctant to hold that a judge who is disqualified from presiding over a proceeding is forever barred from sitting in unrelated cases involving the same parties or counsel." Flamm, *supra*, Section 22.9, at 663. Further, unlike other political campaigns, judicial campaigns are active for a designated period of time. Pursuant to Jud.Cond.R. 4.4, fundraising in a judicial campaign cannot begin until 120 days before the primary election date, and generally must conclude 120 days after the general election.¹ For these reasons, we believe that the basis for disqualification dissipates as the proximity in time from the campaign increases. The Board therefore advises judges to disqualify themselves from cases involving lawyers with whom they have a substantial political relationship due to the lawyer's campaign activities for at least the entire fundraising period. Nevertheless, because disqualification connected to a lawyer's campaign activity is evaluated on a case-by-case basis, other facts and circumstances could require disqualification to continue after the fundraising period ends. These facts might include a lawyer's management of campaign wrap-up tasks or a lawyer's decision to extend his or her

¹ There are different fundraising deadlines in campaigns involving a primary defeat or the death or withdrawal of a candidate. See Jud.Cond.R. 4.4.

campaign involvement because the judge is on the ballot in the next election cycle for a different seat or position.

b. No Imputation of Disqualification

Another follow-up question concerns the “imputation” of judicial disqualification to lawyers in the same firm as a lawyer who has a substantial political relationship with a judge in a current election campaign. Jud.Cond.R. 2.11 does not impute a judge’s disqualification to other lawyers in the same firm. In fact, Jud.Cond.R. 2.11, Comment [4], states that “[t]he fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge’s impartiality might reasonably be questioned...or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding...the judge’s disqualification is required.” The Board believes a similar approach should be taken regarding the partners and associates of a lawyer-participant in a judicial campaign. That is, the campaign activity of the particular lawyer before the judge should be evaluated for disqualification purposes, rather than imputing one lawyer’s disqualification to the other lawyers in the firm.

Viewing this issue from the perspective of the Rules of Professional Conduct (Rules) does not alter the Board’s conclusion on imputation. Judicial disqualification and lawyer disqualification are two separate and distinct concepts. See Flamm, *supra*, Section 1.9, at 24. Depending upon the facts and circumstances of a particular representation, it is possible that a lawyer may conclude that his or her judicial campaign involvement creates a conflict of interest under Prof.Cond.R. 1.7, which states that a conflict is present if a lawyer’s “own personal interests” materially limit “the lawyer’s ability to consider, recommend, or carry out an appropriate course of action” for the client. Prof.Cond.R. 1.10 governs the imputation of a lawyer’s conflicts of interest to other lawyers in the firm, but indicates that imputation will not attach when the conflict is “based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.” If the lawyer determines that his or her campaign involvement is not a conflict of interest as defined in Prof.Cond.R. 1.7, imputation under Prof.Cond.R. 1.10 is not applicable. Should the lawyer identify a conflict, it would be based upon the lawyer’s personal interest, and imputation of the conflict would only result if the interest materially limits the representation by other lawyers in the firm. This imputation analysis is only relevant to disqualification of the lawyer, not the judge.

Judge's Disclosure of a Lawyer's Judicial Campaign Participation

Second, the requester asks if a judge must disclose a lawyer's involvement in the judge's campaign to the parties and counsel when the lawyer has a case before the judge. Disclosure is addressed in Jud.Cond.R. 2.11(C), as is the remittal of disqualification:

(C) A judge subject to disqualification under this rule, other than for personal bias or prejudice under division (A)(1) of this rule, may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Jud.Cond.R. 2.11, Comment [5], also speaks to disclosure: "[a] judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification."

Under Jud.Cond.R. 2.11(C), if a judge concludes that he or she has a substantial political relationship with a lawyer due to the lawyer's judicial election campaign activities, the judge may choose to disclose the relationship to the parties and their counsel in cases involving the lawyer and request a waiver of disqualification. Jud.Cond.R. 2.11(C) does not require disclosure if the judge disqualifies himself or herself from a case based upon a substantial political relationship with a lawyer. When a lawyer is a "mere participant" in a judicial campaign, and after consideration of the factors set forth in this opinion, a judge concludes that he or she does not maintain a substantial political relationship with the lawyer, the Board's view is that the judge is not required to disclose the lawyer's campaign participation. Ohio affidavit cases have consistently held that mere campaign participation does not mandate judicial disqualification. Jud.Cond.R. 2.11, Comment [1], states that a lawyer's public support of a judge's campaign does not disqualify the judge and ethics authorities support this approach. Accordingly, the mere campaign participation of a lawyer does not

constitute a sufficient reasonable and objective basis for disqualification and the judge is not required to disclose the lawyer's participation. The judge may, however, disclose the information if he or she so chooses. If the judge concludes he or she has a personal bias or prejudice for or against the lawyer, waiver of disqualification is not permitted under Jud.Cond.R. 2.11(C).

Lawyer's Disclosure of His or Her Judicial Campaign Participation

Next, the requester inquires as to a lawyer's obligation to disclose judicial campaign activity to opposing counsel in cases before the judge associated with the campaign. In Advisory Opinion 92-9, the Board stated that because "lawyers must avoid the appearance of impropriety, it is suggested that during the campaign there be full disclosure to, and consent by, opposing counsel." Opinion 92-9 at syllabus. The Board's view at that time was based entirely on the general pronouncement in former Canon 9 of the Code of Professional Responsibility that "a lawyer should avoid even the appearance of professional impropriety." When the Supreme Court adopted the Rules in 2007, it eliminated the "appearance of impropriety" language. Upon consultation of the Rules, we could not locate a provision that explicitly requires a lawyer to disclose his or her judicial campaign activity to opposing counsel when the campaign involves the judge presiding over the matter. Consequently, we are unable to find current support for the Board's previous advice on disclosure to opposing counsel. While a lawyer is permitted to disclose his or her connection to the presiding judge's campaign, the Rules do not mandate such disclosure.

This general advice to lawyers is tempered by the rules on impartiality and decorum of the tribunal, professional misconduct, and client communication. Prof.Cond.R. 3.5(a) prohibits lawyers from "seek[ing] to influence a judicial officer, juror, prospective juror, or other official by means prohibited by law." The law governing improper influence upon a tribunal includes the Code of Judicial Conduct. See Prof.Cond.R. 3.5, Comment [1]. Under Prof.Cond.R. 8.4(e), it is professional misconduct for a lawyer to "state or imply an ability to influence improperly a government agency or official." Thus, should a lawyer choose to disclose judicial campaign activity to opposing counsel, the lawyer must not use the information to convey an impression that the lawyer is in particular good favor with the judge. It is also professional misconduct for a lawyer to "knowingly assist a judge or judicial officer in conduct that is a violation of the [Rules], the applicable rules of judicial conduct, or other law." Prof.Cond.R. 8.4(f). If a lawyer has a substantial political relationship with a judge who is presiding over a case in which the lawyer is counsel, and the judge has not disqualified himself or herself or disclosed the relationship as part of the

Jud.Cond.R. 2.11(C) remittal process, the judge may be in violation of the Code. “[A] lawyer’s continued participation in a case presided over by a judge who is acting in violation of Judicial Conduct Rule 2.11 constitutes ‘assistance’ of that misconduct in violation of Rule 8.4(f).” ABA Commt. on Ethics and Prof’l Responsibility, Formal Op. 07-449 (Aug. 9, 2007), at 4. In this situation, the lawyer should bring the matter to the attention of the judge. This notification would not be an ex parte communication under Jud.Cond.R. 2.9. *Id.* at 4-5. Finally, Prof.Cond.R. 1.4 imposes a broad duty of client communication upon a lawyer, including “[reasonable consultation] with the client about the means by which the client’s objectives are to be accomplished” and “[explanation of] a matter to the extent reasonably necessary to make informed decisions regarding the representation.” Prof.Cond.R. 1.4(a)(2) and (b). In accordance with the duty of client communication, a lawyer engaged in a substantial political relationship with a judge presiding over a client’s matter should inform the client of the relationship.

Judicial Disqualification when Lawyer is Judge’s Legal Advisor During Campaign

The requester’s final question is whether judicial disqualification is required when a lawyer acting as a judge’s legal advisor in an election campaign has a case before the judge. Applying Jud.Cond.R. 2.11, if the judge has a personal bias or prejudice concerning the lawyer, disqualification is required and cannot be waived pursuant to Jud.Cond.R. 2.11(C). Otherwise, if a lawyer-client relationship exists between the judge and lawyer, the question is whether the relationship would cause a reasonable person to question the judge’s impartiality. Jud.Cond.R. 2.11(A). Since 1989, Ohio affidavit of disqualification cases have held that a reasonable question as to impartiality exists when a judge’s lawyer represents a party before the judge on an unrelated matter. *In re Disqualification of Badger*, 47 Ohio St.3d 604, 546 N.E.2d 929 (1989), involved a judge who had been represented in an official-capacity matter by counsel for one of the defendants in a case before the judge. The chief justice disqualified the judge, stating that “when a private lawyer is currently representing a judge, even in a matter involving the judge’s official position or conduct, the judge should not sit in a case in which a litigant is represented by the lawyer.” *Id.*, quoting ABA Commt. on Ethics and Prof’l Responsibility, Informal Op. No. 1477 (1981). Subsequent affidavit cases demonstrate that disqualification is only required when the lawyer-client relationship between the judge and lawyer exists contemporaneously with the unrelated case pending before the judge. *In re Disqualification of Morley*, 74 Ohio St.3d 1265, 657 N.E.2d 1363 (1994); *In re Disqualification of DeWeese*, 74 Ohio St.3d 1256, 657 N.E.2d 1357 (1994); *In re Disqualification of Morgan*, 74 Ohio St.3d 1223, 657 N.E.2d 1335 (1990). Reading these cases in light of the “reasonable question as to impartiality”

standard in Jud.Cond.R. 2.11(A), we conclude that a current lawyer-client relationship between a judge and a lawyer representing a party in an unrelated case before the judge requires the judge's disqualification. Similarly, if a lawyer serves as a judge's legal advisor during a political campaign, and there is a lawyer-client relationship between the judge and lawyer, the judge must disqualify himself or herself from any proceeding involving the lawyer. Disqualification should continue for the duration of both the lawyer-client relationship and the election fundraising period. Whether the relationship exists within the campaign context or not, the judge may seek a waiver of disqualification by following the remittal process in Jud.Cond.R. 2.11(C). *Accord* ABA Formal Op. 07-449 at 3-4.

Withdrawal of Advisory Opinion 92-9

Advisory Opinion 92-9 examines judicial disqualification as it relates to a lawyer's judicial election campaign activity under the former Code of Judicial Conduct, which the Supreme Court repealed effective March 1, 2009, and the former Code of Professional Responsibility, which the Court repealed effective February 1, 2007. In the Opinion, the Board essentially establishes a general rule that disqualification is not required when a judge's election campaign committee members appear before the judge. The Board also found that to avoid an appearance of impropriety, lawyers must disclose their judicial campaign activity to opposing counsel in cases before the judge/candidate. Because the Board now concludes that under the current Code and affidavit of disqualification cases decided after Opinion 92-9, a lawyer's campaign involvement may require disqualification if there is a substantial political relationship between the judge and lawyer, and that the current Rules do not mandate disclosure of campaign activities to opposing counsel, we withdraw Opinion 92-9 in its entirety.

CONCLUSION:

Jud.Cond.R. 2.11 requires disqualification "in any proceeding in which the judge's impartiality might reasonably be questioned." The political reality in Ohio is that judges are publicly-elected officials. Lawyers are charged with advancing the administration of justice, which includes participation in the evaluation of candidates for judicial office. This participation often takes the form of supporting a judge during an election campaign. Given this framework, the Board is of the opinion that a lawyer's mere participation in a current judicial election campaign does not create a reasonable question as to the judge's impartiality when the lawyer is before the judge. Accordingly, judicial disqualification is not required unless the judge has a personal bias or prejudice concerning the lawyer. However, if a lawyer's current campaign

activities evidence a substantial political relationship with a judge, a reasonable person would question the judge's impartiality in cases involving the lawyer. To determine whether a judge has a substantial political relationship with a lawyer, the judge should consider factors such as the length and level of the lawyer's campaign involvement, whether the lawyer has campaign management responsibilities, the extent of the lawyer's fundraising activities, whether the lawyer's name appears on solicitation letters, emails, and the like, whether the election is contested, and the type of election (statewide, multi-county, or local). If a judge concludes that he or she has a substantial political relationship with a lawyer involved in a case before the judge, disqualification is warranted for the duration of the current campaign fundraising period, but is not "imputed" to other lawyers in the same firm.

If a judge identifies a substantial political relationship with a lawyer, and does not harbor a personal bias or prejudice concerning the lawyer, Jud.Cond.R. 2.11(C) allows the judge to seek a waiver of disqualification after disclosure of the relationship on the record. Disclosure of the relationship is not mandated if the judge disqualifies himself or herself from cases involving the lawyer.

The Rules of Professional Conduct do not require a lawyer to disclose a substantial political relationship with a judge to opposing counsel, but the lawyer should notify the client of the relationship in accordance with Prof.Cond.R. 1.4. If a lawyer serves as a judge's legal advisor during an election campaign, and a lawyer-client relationship exists, the judge must disqualify himself or herself from the lawyer's cases until both the campaign fundraising period and lawyer-client relationship have ended.

The Board withdraws Advisory Opinion 92-9, which was issued under the former Code of Judicial Conduct and former Code of Professional Responsibility.

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 Ohio Rules of Professional Conduct, the Ohio Code of Judicial Conduct, and the Attorney's Oath of Office.