

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 92-9

Issued April 10, 1992

WITHDRAWN BY OPINION 2014-1 ON JANUARY 31, 2014

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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 Canon 7, Ohio Code of Judicial Conduct]

SYLLABUS: 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. However, since judges and lawyers must avoid the appearance of impropriety, it is suggested that during the campaign there be full disclosure to and consent by the opposing counsel. Consideration should also be given to whether there are factors outside the campaign relationship that would require disqualification. This advice extends to appearances by attorneys who are members of a judge's campaign committee.

OPINION: The question presented is whether a judge's naming of a local attorney as a co-chairperson of the judge's re-election campaign committee creates a conflict for the judge if the attorney or members of the attorney's firm practice law in the judge's court.

A campaign committee is essential to a judicial campaign. A judicial campaign committee serves two important functions: securing and managing funds, and obtaining public statements of support for a judicial candidate. Canon 7B of the Code of Judicial Conduct requires that these functions be performed by a judge's campaign committee, not by the judge. The rule also requires that the campaign committee be comprised of "responsible persons." The Code does not prohibit lawyers from serving on campaign committees.

Canon 7B (2) An incumbent judge, or a candidate for judicial office that is filled by public election between competing candidates, should not himself or herself solicit or accept campaign funds, **but he or she may establish a committee of responsible persons to secure and manage the expenditure of funds for his or her campaign and to obtain public statements of support for his or her candidacy.** The committee should not, directly or indirectly, solicit or receive any assessment, subscription, or contribution for any political or personal purpose whatsoever from any employee, appointee of the court, or anyone who does business with the court, but may solicit campaign contributions from lawyers. (Emphasis added).

In judicial elections, judges face a potential conflict between the political necessities of raising money and garnering support and the fundamental need for judicial impartiality. A campaign committee is an important buffer between political necessity and judicial impartiality. It "insulate[s] the candidate to some extent and thereby reduce[s] the danger of the appearance of a lack of impartiality toward those persons who financially support him [her], or refuse to support him [her]." E. Thode, Reporter's Notes to Code of Judicial Conduct 99 (1973).

Some states advise that a judge should disqualify him or herself when a lawyer who participated on the judge's campaign committee represents a client before a judge. See South Carolina Sup. Ct, Op. 5-1982 (1982) (Judges running for re-election may appoint attorneys who appear before them to serve on a financial committee; however, the judge should disqualify himself or herself if the attorney serving or having served on the financial committee appears before the judge.); State of New York Office of Court Administration, Op. 89-107 (1989) (A town justice running for re-election must disqualify himself or herself in any proceeding which the justice's campaign manager, an attorney, appears before the justice during the course of the campaign since impartiality might reasonably be questioned. After the campaign, the justice should follow guidelines set forth in previous opinions for recusal and disclosure.)

However, other states advise that representation of a client before a judge by a lawyer who participated on the judge's campaign committee is proper. See Illinois State Bar Ass'n, Op. 866 (1984) (A lawyer contributing to or participating in a judge's campaign may represent a client before that judge. If lawyers were disqualified from appearing before judges whose campaigns they support, lawyers would be discouraged from participating in campaigns and the judicial system would be unduly encumbered); Florida Sup. Ct, Op. 78-7 (1978) (A judge need not recuse himself or herself in any case in which a participating attorney has contributed time or money to the judge's campaign.)

As to whether there should be disclosure of the campaign relationship, several states do not require disclosure of campaign involvement to an adversary. See Los Angeles County Bar Ass'n, Formal Op. 387 (1980) (Special disclosure to an adversary is unnecessary since the contribution of money or the lawyer's services are a matter of public record); Bar Ass'n of Nassau County, Op. 87-22 (1987) (A lawyer who contributes to a judge's election campaign, is listed on campaign letterhead, and is a member of the judge's re-election committee is not obligated to disclose the campaign involvement to opposing counsel in litigation before that judge.); Florida Sup. Ct, Op. 78-7 (1978) (A judge is not obligated to disclose to the attorneys or parties in a case the fact that an attorney contributed time or money to the judge's election.)

In contrast, at least one state requires full disclosure of the campaign relationship. See Washington Sup.Ct, Op. 88-7 (1988) (A lawyer who formed a campaign committee for a superior court judge's candidacy for the court of appeals may practice before that judge if full disclosure of the campaign relationship is made to all parties and if the attorneys and parties agree in writing that the relationship is immaterial. Members of that attorney's firm may practice before the judge, but if those members are similarly active and visible in the judge's campaign there must be full disclosure of the campaign relationship and agreement by the parties.)

Lawyers, through Canon 9 of the Code of Professional Responsibility, and judges, through Canon 2B of the Code of Judicial Conduct, are required to avoid even the appearance of impropriety. However, lawyers are vital members of judicial campaign committees. They have a genuine interest in seeing that the most qualified judges are elected. The Code of Judicial Conduct could have disallowed their participation on the committees, but did not. Further, although the Code in Canon 3C requires that "[a] judge should disqualify himself [herself] in a proceeding in which his [her] impartiality might reasonably be questioned," the Code in setting forth specific instances requiring disqualification in Canon 3C(1) (a, b, c, d) could have required judicial disqualification if committee members represented clients before a judge on whose committee they served, but did not. In some Ohio counties with relatively few judges and attorneys it would create a severe hardship on the administration of justice if a judge was required to disqualify himself or herself when the campaign committee co-chairperson or campaign committee members appeared before the judge.

In conclusion, it is the Board's opinion 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 lawyer's firm appear before the judge. However, since judges and lawyers must avoid the appearance of impropriety, it is suggested that during the campaign there be full disclosure to and consent by the opposing counsel. Consideration should also be given to whether there are factors outside the campaign relationship that would require disqualification. This advice extends to appearances by attorneys who are members of a judge's campaign committee.

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.