

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

## **OPINION 2005-5**

Issued June 10, 2005

*Withdrawn by Adv. 2017-04*

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*

**SYLLABUS:** It is improper under DR 9-101(A) of the Ohio Code of Professional Responsibility for a former magistrate, now privately practicing law, to represent a person in post-decree matters (such as modifying child custody, parenting time, or child support, or defending or initiating a contempt order to enforce a prior court order) when he or she served as magistrate in the person's original divorce or dissolution action.

**OPINION:** This opinion addresses a question regarding ethical restrictions on legal representation of clients by a former magistrate who leaves court employment and enter the private practice of law.

Is it proper for a former magistrate, now privately practicing law, to represent a person in post-decree matters (such as modifying child custody, parenting time, or child support, or defending or initiating a contempt order to enforce a prior court order) when he or she served as magistrate in the person's original divorce or dissolution action?

Former magistrates are subject to post-employment restrictions. The Ohio Code of Professional Responsibility restricts private employment in DR 9-101(A).

DR 9-101(A) A lawyer shall not accept private employment in a matter upon the merits of which he (she) has acted in a judicial capacity.

Ethical Consideration 9-3 explains that acceptance of such employment would give the appearance of impropriety.

EC 9-3 After a lawyer leaves judicial office or other public employment, he [she] should not accept employment in connection with any matter in which he [she] had substantial responsibility prior to his [her] leaving, since to accept employment would give the appearance of impropriety even if none exists.

Ohio Ethics Law restricts private employment in Section 102.03(A)(1) of the Ohio Revised Code.

R.C. 102.03(A)(1) No present or former public official or employee shall, during public employment or service or for twelve months thereafter, represent a client or act in a representative capacity for any person on any matter in which the public official or employee personally participated as a public official or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion.

Ohio Rev.Code Ann. § 102.03(A)(1) (West Supp. 2005)

As to DR 9-101(A), the words “matter” or “merits” are not defined in the Ohio Code of Professional Responsibility, but case law is instructive. A former judge received a public reprimand for violating DR 9-101(A) when seven years after granting an uncontested divorce as judge he privately represented one of the parties to a divorce and filed a Motion to Modify Parental Rights and Responsibilities. *Disciplinary Counsel v. Christ*, (1996), 74 Ohio St.3d 308, 309. Despite the former judge’s explanation at the hearing that his judicial involvement in the uncontested divorce had been limited to signing the final judgment entry which he considered to be an act perfunctory and insufficient to bar his subsequent private employment, his act violated the rule. *Id.* at 309.

Thus, it is the Board’s view that a divorce or dissolution and any subsequent post-decree matters (such as a modification of child custody, parenting time, child support, or defending or initiating a contempt order to enforce a prior court order) are the same matter for purposes of DR 9-101(A). It is also the Board’s view that a person who serves as magistrate in the original divorce or dissolution action, has acted upon the merits in his or her official capacity.

As to Section 102.03(A)(1) of the Ohio Revised Code, if a magistrate had any personal participation through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion, then the magistrate is prohibited during employment and for twelve months following employment from accepting private representation of a client on the matter. While this restriction applies for only twelve months following employment; DR 9-101(A) applies indefinitely and therefore under the facts presented, it controls the answer to the question raised.

In conclusion, the Board advises that it is improper under DR 9-101(A) of the Ohio Code of Professional Responsibility for a former magistrate, now privately practicing law, to represent a person in post-decree matters (such as modifying child custody, parenting time, or child support, or defending or initiating a contempt order to enforce a prior court order) when he or she served as magistrate in the person’s original divorce or dissolution action.

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