

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 87-029

Issued: September 25, 1987

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

[Modified by Op. 2005-4 on April 15, 2005]

SYLLABUS: A county court judge is disqualified from the practice of law only as to matters pending or originating in that county court during his or her term of office. If the county court is divided into geographic areas of separate jurisdiction, the county court judges are precluded from practicing law in any of the districts of that county court. In addition, county court judges may not hear cases in which their law partner or associates appear as counsel. Judges should also disqualify themselves from any proceeding in which their impartiality might reasonably be questioned.

OPINION: We have before us your request for our opinion on a number of questions dealing with county court judges and their practice of law. In your county, the five county court judges have been assigned to different geographic areas of exclusive jurisdiction, pursuant to Section 1907.15 of the Ohio Revised Code. OHIO REV. CODE ANN. 1907.15 (Baldwin, 1987). With this as background, your questions are as follows:

1. May the judge who is a sole practitioner appear as a lawyer in any of the county court areas over which he has, by statute, no jurisdiction?
2. May the lawyer who is a shareholder in a professional association appear in such courts? May any of his fellow shareholders? May any of the corporation's associates, employees, subcontractors, or independent contractors?

3. May the judge who is a partner in a partnership appear in any of the areas? May his partner? May any associates, employees or subcontractors?
4. May any of the lawyers who appear in the firm name or are listed on the stationery in a group of individual private practitioners appear before any of the judges?
5. May an attorney who is in the same suite and shares some services with a judge, but who does not appear on the stationery or firm name, appear before that judge or any other county court judge?
6. Lastly, is there any difference in any of your opinions between civil and criminal proceedings and, concerning criminal, between misdemeanor and felony proceedings?

Under the Ohio Revised Code, "[a] judge of a county court shall be disqualified from the practice of law only as to matters pending or originating in that county court during his term of office." OHIO REV. CODE ANN. 1907.16 (Baldwin, 1987). County court judges may engage in the practice of law provided they do not practice in the county court in which they serve as judge. This is true regardless of the fact that a county court judge is limited in jurisdiction to causes of action arising in his exclusive area of jurisdiction. 1958 Ohio Att'y Gen. Op. 2143. Therefore, the answer to your first question is no; a county court judge may not appear as a lawyer in any of the other areas of his county court over which he has, by statute, no jurisdiction. This also answers all of your questions regarding the judges of the county court practicing law in that county court.

The unanswered portions of questions two, three and four deal with other members of a legal professional association (LPA), a partnership or an office sharing arrangement, who wish to appear in the county court. In a prior opinion issued by this Board, we stated that law partners or associates of part-time judges are precluded from practicing law in the court on which the part-time judge serves. Board of Commissioners Op. 87-022. This is applicable to LPA'S, as well as a group of private practitioners appearing on the same letterhead.

Whether or not the members of the county court judge's firm or association may appear before other county court judges is

not a question this Board can answer. Whether or not an attorney represents his client for any reason is a matter decided by the individual attorney and his or her client. Board of Commissioners Op. 87-023 (1987). We agree, however, with the ABA that there is nothing in the Code of Professional Responsibility which prevents lawyers from appearing before judges, where the judge has not disqualified himself. ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1306 (1974). In regard to judges disqualifying themselves in general, see Canon 2 and Canon 3C(1) of the Code.

Finally, this opinion does not distinguish between civil and criminal proceedings nor criminal misdemeanor and felony proceedings for it is our opinion that there is no distinction for purposes of complying with the Code of Judicial Conduct.

In conclusion, it is our opinion, and you are so advised, that a county court judge may not practice in the county court in which he resides, whether or not there are separate areas of jurisdiction in the county court. Law partners, associates, shareholders in an LPA, employees, subcontractors or independent contractors may not practice law before a judge who is affiliated with their law practice. A judge should disqualify himself from any proceeding where his impartiality might reasonably be questioned. A judge should also avoid impropriety and the appearance of impropriety in all his activities.

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

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Secretary
Board of Commissioners
on Grievances and Discipline