

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 94-2

Issued February 18, 1994

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]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. 2004-5 issued April 15, 2005]

[Not current-subsequent rule amendments to Canons 1 through 6, Ohio Code of Judicial Conduct, eff. May 1, 1997 and to Compliance Section; to Rules of Superintendence, eff. Jul. 1, 1997.]

SYLLABUS: A part-time county court judge may not practice law in the county court where the judge sits by assignment until the termination of the assignment.

The partners and associates of a part-time county court judge may not practice law in the county court where the judge sits by assignment until the termination of the assignment. The exception is that if the county court is divided into areas of separate jurisdiction under Section 1907.15 of the Ohio Revised Code, the partners or associates may practice in the areas of separate jurisdiction in which the judge is not assigned.

OPINION: Two questions are presented regarding the practice of law by part-time county court judges, their partners, and associates.

1. May a part-time county court judge practice law in the county court where the judge sits by assignment?
2. May the partners or associates of a part-time county court judge practice law in the county court where the judge sits by assignment?

Question 1

The Board is asked to address the propriety of a county court judge practicing law in a court where the judge sits by assignment. This issue is related to, yet distinct from, the issue addressed in Opinion 87-029 (1987). In Opinion 87-029, the Board addressed whether a county court judge may practice law within his or her county court if the county court is divided into areas of separate jurisdiction under Section 1907.15 of the Ohio Revised Code (Baldwin 1993). The Board advised that “[i]f 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.” *Id.*

In Ohio, county court judges are part-time judges. See Ohio Rev. Code Ann. § 1907.11 (Baldwin 1993). County court judges may practice law. Under Canon 5F of the Code of Judicial Conduct, part-time judges "may practice law subject to the restrictions in the Compliance section of this Code." The restrictions within the Compliance section are set forth below.

A. Part-Time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C (2), D, E, F, and G, and Canon 6C, except that a part-time judge must file the annual disclosure statement required by R.C. 102.02;

(2) should not practice law in the court on which he [she] serves or in any court subject to the appellate jurisdiction of the court on which he [she] serves, or act as a lawyer in a proceeding in which he [she] has served as a judge or in any other proceeding related thereto.

Further, under Section 1907.16 (B) of the Ohio Revised Code (Baldwin 1993), "[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."

County-court judges may sit by assignment in any municipal or county court under Rule 13 (A) of the Rules of Superintendence for Municipal Courts and County Courts. The rule is set forth below.

Rule 13 (A) Assignment. Any active municipal or county court judge, or any full-time municipal court judge who voluntarily has retired or who is retired by virtue of Article IV, Section 6(C) of the Ohio Constitution and who is not engaged in the practice of law, may consent to be assigned by the Chief Justice or acting Chief Justice of the Supreme Court to serve as a judge on any municipal or county court.

The assignment of judges provides a method to redistribute judicial resources to courtrooms where needed. Yet, judicial economy must be compatible with ethical considerations. Under Canon 2 of the Code of Judicial Conduct, the broad mandate is that "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His [Her] Activities," and the requirement in Canon 2 (A), set forth below, for conduct that promotes public confidence.

Canon 2(A) A judge should respect and comply with the law and should conduct himself [herself] at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The restrictions on the practice of law by part-time judges within the Compliance section further the purposes of Canon 2 by preventing the appearance of impropriety that would exist when an individual serves as a judge of a court one day and serves as a lawyer trying a case in that court the next day.

To answer the question raised, the Board must determine whether the court on which a judge sits by assignment constitutes a court in which a judge serves, thus triggering the prohibition within the Compliance section that a part-time judge should not practice law in the court on which he or she serves. When a judge sits by assignment, the judge has full judicial authority with regard to each assignment. The judge serves the court until the termination of the assignment. See Article IV Section 5(A) (3) of the Ohio Constitution stating that a visiting judge "shall serve in the assigned capacity until the termination of the assignment."

It is the Board's view that when a judge sits by assignment, the judge is serving the court to which he or she is assigned, thus triggering the prohibition with the Compliance section. In conclusion, this Board advises that a part-time county court judge may not practice law in the county court where the judge sits by assignment until the termination of the assignment.

Question 2

The compliance section of the Code of Judicial Conduct places no express restrictions on the practice of law by the partners or associates of a part-time judge. Nevertheless, such restrictions have been implied. In Opinion 87-022, the Board cited Compliance Section A (2) in advising that "[l]aw partners or associates of a part-time judge are precluded from practicing law in the court on which the part-time judge serves." However, in Opinion 87-029 the Board declined to advise on whether members of a county court judge's firm may appear before other county court judges when the county court is divided into geographic areas of separate jurisdiction.

The Board takes this opportunity to clarify these issues. First, partners or associates of a part-time county court judge may not practice law before a judge who is their partner or associate. This restriction is in keeping with the requirement of Disciplinary Rule 9-101 (C) that "[a] lawyer shall not state or imply that he [she] is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official." When a partner or an associate of a part-time judge appears before the judge there is an implication of improper influence.

Second, when a county court is divided into areas of separate jurisdiction, the Board sees no impropriety in the partners or associates of a county court judge appearing before other judges in the separate areas of jurisdiction. Under such circumstances, the Board fails to find an implication of improper influence.

Third, in county courts not divided into areas of separate jurisdiction, it would be improper for the partners or associates of a part-time judge to appear before any judge of that court. The shared jurisdiction creates an appearance of improper influence.

As to the issue presented, this Board advises that partners and associates of a part-time county court judge may not practice law in a county court where the judge sits by assignment until the termination of the assignment. The exception is that if the county court is divided into areas of separate jurisdiction under Section 1907.15 of the Ohio Revised Code, the partners or associates may practice in the areas of separate jurisdiction in which the judge is not assigned.

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.