

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 98-3

Issued April 3, 1998

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

SYLLABUS: A part-time magistrate of a common pleas court may not practice law in the court on which he or she serves or on which the appointing judge serves. Thus, it is not proper for a part-time juvenile magistrate to practice law in the probate court when the juvenile court is within the probate division and the appointing judge presides over both courts. The Board withdraws Opinions 87-014 and 87-036.

The law partners or associates of a part-time magistrate may practice law in the court on which the part-time magistrate serves, so long as the partners or associates do not appear before the part-time magistrate. The law partners or associates may appear before the appointing judge or before another judge or another magistrate. The appointing judge need not recuse himself or herself unless he or she has a reason for recusal under Canon 3E of the Ohio Code of Judicial Conduct. Thus, it is proper for the law partners and associates of a part-time juvenile magistrate to practice law in the probate court even when the juvenile court is within the division of the probate court and the appointing judge presides over both courts.

A part-time magistrate of a municipal court may not practice law in the court on which he or she serves or on which the appointing judge serves. Thus, it is not proper for a part-time municipal magistrate, who is appointed to hear small claims proceedings, forcible entry proceedings, and other matters as referred by the court, to practice law in the municipal court on which the appointing judge serves.

The law partners or associates of a part-time municipal magistrate may practice law in the municipal court on which the part-time magistrate serves, so long as the partners or associates do not appear before the part-time magistrate. The law partners or associates may appear before the appointing judge or before another judge or another magistrate. The appointing judge need not recuse himself or herself unless he or she has a reason for recusal under Canon 3E of the Ohio Code of Judicial Conduct.

OPINION: This opinion addresses several questions regarding restrictions on the practice of law by a part-time magistrate.

1. Is it proper for a part-time juvenile magistrate to practice law in the probate court when the juvenile court is within the division of the probate court and the appointing judge serves both courts?

2. Is it proper for law partners and associates of the part-time juvenile magistrate to practice law in the probate court when the juvenile court is within the division of the probate court and the appointing judge serves both courts?
3. Is it proper for a part-time municipal magistrate, who is appointed to hear small claims proceedings, forcible entry proceedings, and other matters as referred by the court, to practice law in the municipal court in which the appointing judge serves?
4. Is it proper for law partners and associates of the part-time municipal magistrate to practice law in the municipal court?

Question One

Is it proper for a part-time juvenile magistrate to practice law in the probate court when the juvenile court is within the probate division of the common pleas court and the appointing judge serves both courts?

Part-time magistrates of a common pleas court are permitted to practice law, but subject to the restrictions in the Compliance Section of the Ohio Code of Judicial Conduct. Under Section B(2) of Compliance With the Code of Judicial Conduct, a part-time magistrate “[s]hall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other related proceeding.”

The restriction on the practice of law in the “court on which he or she serves” is not new. It was part of the Code of Judicial Conduct adopted by the ABA House of Delegates in 1972. It was adopted by the Supreme Court of Ohio as part of the Ohio Code of Judicial Conduct in 1973. It is a limitation “designed to avoid the appearance of impropriety or of a lack of impartiality that would arise in the absence of restrictions.” E. W. Thode, *Reporters’ Notes to Code of Judicial Conduct*, 102 (1973).

The meaning of the words “court on which he or she serves” has been subject to interpretation. The Board has consistently interpreted that language “court on which he or she serves” as allowing a part-time referee in one division of a common pleas court to practice in another division of the court of common pleas, but not before the appointing judge. In Op. 87-014, the Board advised that “part-time domestic relations referees in a court of common pleas may practice law in other divisions of the court of common pleas provided they do not practice before the judge to whom they owe their appointment and avoid the appearance of any impropriety.”

In Opinion 87-036, the Board concluded that “under the Code of Judicial Conduct, a part-time referee in the Juvenile Division may practice in other Divisions of the Court of Common Pleas.” In so concluding, the Board advised that a part-time common pleas court juvenile division referee may practice in the probate division of the common pleas court, but not before the appointing judge.

The facts set forth in Opinion 87-036 created confusion. Both the juvenile court and the probate court were purported to be separate divisions, but the same judge presided over both courts. Although this is a possible arrangement, it is not a typical arrangement in Ohio. It is more common in Ohio for a juvenile court to be within a probate division or within a domestic relations division rather than to be a separate division.

As a result, clarification is needed. Is a part-time juvenile magistrate permitted to practice law in the probate court when the juvenile court is a part of the probate division of the common pleas court, or only when the probate court and juvenile court are each separate divisions of the common pleas court? Because application of the Board’s advice is unclear, the Board withdraws Opinions 87-014 and 87-036 and reconsiders the issue in this opinion.

In Ohio, common pleas courts are created by constitution. Under Article IV § 4(A)(C), common pleas courts have probate divisions, unless provided by law, and have such other divisions as established by law. Under Article IV § 23, counties of less than forty thousand population may elect that “the same person shall serve as judge of the court of common pleas, judge of the probate court, judge of the juvenile court, judge of the municipal court, and judge of the county court, or of two or more of such courts.” Thus, throughout the eighty-eight counties of Ohio there are various combinations of common pleas, domestic relations and juvenile courts. *See e.g.* 2101.02 (Baldwin 1994), 2101.021 (Baldwin 1994), 2101.43 to 2101.46 (Baldwin 1994 and Supp. 1998), 2151.07 and 2151.08 (Baldwin 1994), 2301.02 (Baldwin Supp. 1998), and 2301.03 (Baldwin Supp. 1998).

It is important that all of these courts operate as and be perceived as fair and impartial places for the public to resolve disputes. If a judicial officer presides in a court room as a part-time magistrate or part-time judge and then removes his or her robe to represent clients in that same court the same day, the next day, or even the next week or month how will the public perceive our courts? The perception will be mistrust—mistrust of that court and mistrust of the justice system.

Because courts are sometimes part of a division as opposed to being a separate division and because an appointing judge is sometimes a judge of more than one division of a common pleas court, the Board must construe the words of the compliance section more precisely to eliminate any confusion that has resulted. The words “court on which he or she serves” must be construed narrowly to effectuate the broad mandate of Canon 1 that “A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE

JUDICIARY” and Canon 2 that “A JUDGE SHALL RESPECT AND COMPLY WITH THE LAW AND SHALL ACT AT ALL TIMES IN A MANNER THAT PROMOTES PUBLIC CONFIDENCE IN THE INTEGRITY AND IMPARTIALITY OF THE JUDICIARY.”

As to common pleas courts, the Board now construes the words “court on which he or she serves” to mean that a part-time magistrate of a common pleas court may not practice law in the court on which he or she serves or on which the appointing judge serves. This construction preserves the impartiality and integrity of the courts as required under Canons 1 and 2 and effectuates the purpose of Compliance Section.

In conclusion, the Board advises that a part-time magistrate of a common pleas court may not practice law in the court on which he or she serves or on which the appointing judge serves. Thus, it is not proper for a part-time juvenile magistrate to practice law in the probate court when the juvenile court is within the probate division of the common pleas court and the appointing judge presides over both courts. The Board withdraws Opinions 87-014 and 87-036

Question Two

Is it proper for law partners and associates of the part-time juvenile magistrate to practice law in the probate court when the juvenile court is within the division of the probate court and the appointing judge serves both courts?

The law partners and associates of a part-time magistrate are not judicial officers. The partners and associates are not cloaked with any judicial authority. They would not carry the part-time magistrate’s prestige and authority into the courtroom with them. Their appearance in the courtroom on behalf of a client would not raise ethical concerns unless they stated or implied they had the ability to influence improperly or upon irrelevant grounds the tribunal which would be in violation of DR 9-101(C) or unless they appeared before their partner who is magistrate.

In Opinion 87-036, now withdrawn by this opinion, the Board addressed whether members of a part-time referee’s law firm may practice law in the division of a court in which the part-time referee serves. The Board advised that “[m]embers of the part-time referee’s law firm may not appear before their colleague as referee, but may appear before another judge or referee in the same division.” The Board continues its view that there is no restriction on a law partner or associate practicing law in the court on which the part-time magistrate serves, so long as the partners or associates do not appear before the part-time magistrate.

In conclusion, the Board advises that the law partners or associates of a part-time magistrate may practice law in the court on which the part-time magistrate serves, so long

as the partners and associates do not appear before the part-time magistrate. The law partners or associates may appear before the appointing judge or before another judge or another magistrate. The appointing judge need not recuse himself or herself unless he or she has a reason for recusal under Canon 3E of the Ohio Code of Judicial Conduct. Thus, it is proper for the law partners and associates of a part-time juvenile magistrate to practice law in the probate court even when the juvenile court is within the division of the probate court and the appointing judge presides over both courts.

Question Three

Is it proper for a part-time municipal magistrate, who is appointed to hear small claims proceedings, forcible entry proceedings, and other matters as referred by the court, to practice law in the municipal court on which the appointing judge serves?

Part-time magistrates of a municipal court are permitted to practice law, but subject to the restrictions of the Ohio Code of Judicial Conduct. The restrictions under Section B(2) of Compliance With the Code of Judicial Conduct are that a part-time magistrate “[s]hall not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a judge or in any other related proceeding.”

As stated in response to Question One, the compliance words “court on which he or she serves” must be construed narrowly to effectuate the broad mandate of Canon 1 that “A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY” and Canon 2 that “A JUDGE SHALL RESPECT AND COMPLY WITH THE LAW AND SHALL ACT AT ALL TIMES IN A MANNER THAT PROMOTES PUBLIC CONFIDENCE IN THE INTEGRITY AND IMPARTIALITY OF THE JUDICIARY.”

Municipal courts are statutory courts. *See* Ohio Rev. Code Ann. §§1901.01 and 1901.02 (Baldwin 1994). Municipal courts have small claims divisions. *See* Ohio Rev. Code Ann. §1925.01 (Baldwin Supp. 1998). Some municipal courts have environmental and housing divisions. *See* Ohio Rev. Code Ann. §§1901.011 (Baldwin 1994) and 1901.25 (Baldwin 1994).

As to municipal courts, the Board construes the words “court on which he or she serves” to mean that the part-time municipal magistrate may not practice law in the court on which he or she serves or on which the appointing judge serves. This preserves the impartiality and integrity of the courts as required under Canons 1 and 2 and effectuates the purpose of the Compliance Section.

In conclusion, the Board advises a part-time magistrate of a municipal court may not practice law in the court on which he or she serves or on which the appointing judge

serves. Thus, it is not proper for a part-time municipal magistrate, who is appointed to hear small claims proceedings, forcible entry proceedings, and other matters as referred by the court, to practice law in the municipal court on which the appointing judge serves.

Question Four

Is it proper for law partners and associates of the part-time municipal magistrate to practice law in the municipal court?

Consistent with the Board's advice in Questions One, Two, and Three, the Board advises that the law partners or associates of a part-time municipal magistrate may practice law in the municipal court on which the part-time magistrate serves, so long as the partners or associates do not appear before the part-time magistrate. The law partners or associates may appear before the appointing judge or before another judge or another magistrate. The appointing judge need not recuse himself or herself unless he or she has a reason for recusal under Canon 3E of the Ohio Code of Judicial Conduct.

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.