

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 90-09
(Reissued July 12, 1991)

**Disqualification in Superior Court Cases Where
Judicial Colleague Is a Litigant**

Issues

1. May a judge or commissioner of the superior court in a particular county ethically preside over a case in which a colleague of the same court is a private litigant?

Answer: No.

2. If he may not, is it appropriate to send such cases to other judicial officers of the Superior Court of Arizona sitting in other counties?

Answer: Yes.

Discussion

Clearly, the collegial association of judges and commissioners who associate with each other in varying degrees of frequency socially, administratively, and judicially would give rise to a reasonable question as to the impartiality of a judge acting in a case involving a colleague.

Judges are required to mutually solve many problems unique to each community. Meetings are held regularly, local rules of practice are enacted and a vote is required to determine who will act as the juvenile judge each year.

While many judges might feel they had no actual personal bias or prejudice in favor of or against a judge sitting in the same community on the same bench, or any personal knowledge of disputed evidentiary facts concerning the proceeding which would require a disqualification under Canon 3C(1)(a), the mutuality of interest and close association would reasonably raise the question of impartiality in the minds of the public and litigants.

In addition, a conflict of interest would exist making disqualification necessary under 3C(1)(a).

It is the opinion of this committee that disqualification would be required in all of the following situations which have been inquired about by those seeking this opinion:

1. Cases in which a judge or commissioner is sued for damages in his or her official capacity, e.g., a claim that the judge violated the plaintiff's civil rights, and that the conduct could not come within the protection accorded by judicial immunity.
2. A judge or commissioner sues or is sued personally, e.g., on a contract or note or for dissolution of marriage, or is charged with a criminal offense, felony or misdemeanor.

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3. The spouse of a judge or commissioner of the court sues or is sued or charged as described in paragraph 2.

4. A minor child of a judge or commissioner of the court sues or is sued or charged as described in paragraph 2.

5. An adult son or daughter of a judge or commissioner of the court sues or is sued or charged in the manner described in paragraph 2.

6. Other relatives of the judge or commissioner, e.g., siblings, parents, in-laws, grandchildren, sue or are sued or charged as described in paragraph 2.

7. A business in which the judge or commissioner or a spouse owns or has a controlling interest in sues or is sued civilly.

8. An administrative department head of the court sues or is sued civilly or is charged with a crime. Our department heads are: court administrator, adult or juvenile probation chief, clerk of the court, conciliation services director and law library director.

A judge or commissioner in the above situations may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If based on such disclosure, the lawyers, independently of the judge's participation, all agree that the judge need not disqualify himself, then he may remain as the judge in the proceeding.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 3C(1)(a) (1985).

Revision History

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