

ADVISORY OPINION 97-02  
(February 13, 1997)

## Disqualification When Members of Judicial Merit Commission Appear Before Magistrates

### Issues

1. Is it ethically proper for municipal judges to hear cases in which a party is represented by a member of the merit commission?

**Answer:** No, with qualifications.

2. Are municipal judges required to inform opposing parties or counsel of the status of the attorney who is on the merit commission?

**Answer:** Yes.

### Facts

A city magistrate merit commission reviews the performance of municipal judges once every four years for retention purposes. The commission makes a recommendation to the mayor and city council whether or not to retain a judge. The commission includes among its members attorneys who practice on occasion in the municipal court.

### Discussion

Canon 2A of the Arizona Code of Judicial Conduct requires a judge to avoid the “appearance of impropriety” and to “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.” This means, in the language of Canon 2B, that a judge cannot allow any “political or other relationships to influence the judge’s judicial conduct or judgment” nor “permit others to convey the impression that they are in a special position to influence the judge.” The commentary to Canon 2A further states:

Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the code . . . *The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired* (emphasis added).

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To permit municipal judges to hear cases in which a party is represented by a member of the municipal judges merit commission would create the appearance of impropriety prohibited in Canon 2. The merit commission is the very body that either recommends retention or not to the appointing authorities of these municipal judges, i.e., the mayor and city council. The judge's impartiality toward the attorney member of the commission could reasonably be questioned. Recusal is required by Canon 3E(1), which states: "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."

Remittal of disqualification after disclosure of the disqualification is permissible under Canon 3F. The remittal procedure of Canon 3F must be strictly followed.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canons 2A and commentary, 2B, 3E(1) and commentary (1993).