COMMONWEALTH OF KENTUCKY

JUDICIAL ETHICS COMMITTEE
ADMINISTRATIVE OFFICE OF THE COURTS
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FRANKFORT, KENTUCKY 40601

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Circuit Court

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JUDICIAL ETHICS OPINION JE-1 (REVISED)

Informal

Question: When a judge's son is acting as an attorney in a proceeding before him, may the judge preside unless and until a motion of disqualification is made by one of the parties?

Answer: No.

Reference: SCR 4.300, Canon 3C (1) (c) and Canon 3D.

OPINION: (November 1979)

Under the terms of Canon 3C(1)(c) a judge should disqualify himself when his son is involved as an attorney in a proceeding before him. However, Canon 3D provides a means by which the disqualification may be waived. The steps for a waiver under Canon 3D are as follows:

1. The judge must take the initiative by disclosing on the record the basis of his disqualification. This requires either a written notice of the disqualification to all attorneys in the proceeding, or a statement from the bench which is recorded by electronic tape or by the court reporter.

2. The attorneys and parties may, if they wish, sign a waiver of the disqualification. The waiver must be made independently of the judge's participation and preferably out of his presence.

3. The waiver agreement, signed by all parties and lawyers in the case, must be incorporated in the record of the proceeding: This means that it should be filed in the case file and noted on the docket sheet for the case.

The judge may inform the parties and attorneys of the possibility of waiver, and he may provide a waiver form for their use, but he should then dissociate himself from the waiver decision. If the parties and attorneys wish to waive the disqualification, the better practice is for them to sign the waiver out of the presence of the judge.

Chairman
Ethics Committee of the Kentucky Judiciary