



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
ROOM 200 STATE CAPITOL
FRANKFORT, KENTUCKY 40601-3489

ANTHONY M. WILHOIT
COURT OF APPEALS

Benjamin L. Dickinson
DISTRICT COURT

Daniel Schneider
CIRCUIT COURT

B. M. WESTBERRY, CHAIRMAN
ATTORNEY

UHEL O. BARRICKMAN
ATTORNEY

Judicial Ethics Opinion

JE-83
November 9, 1992

Question: Whether a judge is required to recuse himself when his campaign opponent is an attorney in a case before him?

Answer: There is no mandatory disqualification in this case. Disqualification is discretionary with the judge. However, where there is evidence that the judge cannot be impartial he will be required to disqualify.

The Judicial Ethics Committee was asked to decide whether a judge would have to disqualify himself when his campaign opponent is an attorney in a case before him. The Code does not provide for mandatory disqualification in this case. Judicial Ethics Opinions from other jurisdictions are split on this issue. D. Solomon, The Digest of Judicial Ethics Advisory Opinions (1991) (AL opinion 84-219: Judge need not disqualify where attorney is prior political opponent; FL opinion 84-12: Where attorney is opposing judge for re-election, judge should automatically disqualify; MI opinion JI-23: Judge must disqualify where one of the attorneys is an announced candidate for the judge's office; OH opinion 87-23: Judge does not have to disqualify where his opponent represents one of the parties; WA opinion 88-16: A judge need not disqualify where one of the attorneys ran against him.) Case law indicates that the matter is discretionary with the judge. State v. Grant Superior Court No. 1, 471 N.E.2d 302 (Ind. 1984).

However, should the campaign become bitter, and if there is evidence that the judge cannot be impartial because of the degree of animosity which exists between him and his opponent, the judge should disqualify. Turner v. Commonwealth, 59 Ky. Reports 619 (1859); Hayslip v. Douglas, 400 So.2d 553 (Fla. App. 1981).

A handwritten signature in black ink, appearing to read "B. M. Westberry".

B. M. Westberry
Chairman
Judicial Ethics Committee