

JUDICIAL ETHICS COMMITTEE

OPINION NO. 97-2

We have been asked to render an ethics opinion regarding the Code of Judicial Ethics, specifically, whether Canon 3(E) requires a judge to disqualify himself or herself if a lawyer for one of the parties in a proceeding has been retained by the Committee on Compensation and Retirement to assist in advocating the maintenance or improvement of judicial compensation before the General Assembly. The Committee on Compensation and Retirement is affiliated with the Tennessee Judicial Conference. The Committee advances the position of state judges related to salary and retirement concerns before the state legislature. The Committee does not use state funds, but rather, supports its activities with voluntary personal donations from active and retired state judges.

The Judicial Ethics Committee is of the opinion that recusal would not be necessary because an individual judge's impartiality could not reasonably be questioned under the circumstances described above.

The Judicial Ethics Committee believes that, normally, recusal is only required when a lawyer represents a judge in a personal matter or in a matter pertaining to his official conduct. See ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1477 (1981).

Furthermore, the Judicial Ethics Committee is of the opinion that the Rule of Necessity would preclude the need for recusal. If we were to find that a judge must recuse himself or herself from any case involving a lawyer retained to advocate for the Committee on Compensation and Retirement, then no judge could preside in any case in which the person retained appeared. In such a situation, the Rule of Necessity becomes operable. See ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1477 (1981)(no disqualification required "when a private lawyer with special expertise is called upon to represent a court or a judicial system in a matter pertaining to judicial salaries or pensions"). See also Reilly v. South Eastern Pennsylvania Transportation Authority, 479 A.2d 973, 979-80 (Pa. Super. Ct. 1984) aff'd, 489 A.2d 1291(Pa.1985) (disqualification of trial judge not required in case where lawyer represented all Pennsylvania trial judges in a class action seeking increased compensation) and United States v. Will, 499 U.S. 200, 101 S.Ct. 471, 480-81(1990).

It is, therefore, the opinion of the Judicial Ethics Committee that disqualification is not required under the circumstances described above.

FOR THE COMMITTEE:

WALTER C. KURTZ, JUDGE

CONCUR: