BEFORE THE OHIO COURT OF APPEALS JUDGES ASSOCIATION

REGARDING

THE MATTER OF SUPREME COURT JUSTICE PATRICK DEWINE

By Bradley N. Frick, Special Disciplinary Counsel

January 19, 2018

Complaint against

R. Patrick DeWine
Ohio Supreme Court Justice
65 South Front Street
Columbus, Ohio 43215
Respondent

SCC 2018-001

COMPLAINT AND CERTIFICATE
(Rule II, Section 4 of the Rules For the Government of the Judiciary)

Bradley N. Frick
Special Disciplinary Counsel
1265 Neil Avenue
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Relator

Pursuant to the Ohio Supreme Court Rules for the Government of the Judiciary and the Ohio Code of Judicial Conduct, Special Disciplinary Counsel (SDC), the Relator in this matter, states the following:

FACTUAL ALLEGATIONS:

1. On January 5, 2009, Respondent assumed the Common Pleas Court bench in Hamilton County, Ohio.
2. On November 2, 2010, Respondent's father, Michael DeWine, was elected Attorney General of the State of Ohio.
3. Two days later, on November 4, 2010, Respondent wrote to Jonathan Marshall, the Secretary of the Supreme Court of Ohio's Board of Commissioners on Grievances and Discipline, seeking an ethics opinion now that the Attorney General's office would be appearing in his courtroom in 2011 and beyond. (Exhibit 1, Respondent letter to Marshall).

4. Respondent has stated both personally and through his counsel, that Mr. Marshall did not render a written response, but orally told Respondent that he need only recuse when his father *personally* appears before him.
5. Respondent followed this principle during his tenure on the Common Pleas bench, the Court of Appeals bench and the Supreme Court, recusing himself only twice since 2011, according to his October 31, 2017 statement to SDC.
6. On January 10, 2011, Michael DeWine was sworn in as Ohio's Attorney General. Respondent administered the oath of office. (Exhibit 2, photo). This photo is now and has been for some time on the Ohio Attorney General's web site at http://www.ohioattorneygeneral.gov/About-AG/Mike-Dewine and was on the Attorney General's Home page for months, in rotation, at http://www.ohioattorneygeneral.gov/. These public web sites are openly visible to the public.
7. While on the Common Pleas court bench Respondent heard many cases involving the Ohio Attorney General's office. His father apparently never personally appeared in his courtroom in his official capacity.
8. Respondent assumed the First District Court of Appeals bench in early January, 2014. While serving on the Court of Appeals bench he heard many cases involving his father's office, but his father apparently did not appear personally before Respondent.
9. In November of 2014 all three judges in the Seventh District Court of Appeals recused themselves from *14–MA-73, In re: Grand Jury Proceedings State of Ohio v. John Doe.* Attorney General DeWine's office represented the State of Ohio in this case.
10. On November 24, 2014, Chief Justice O'Connor appointed Respondent to hear *Grand Jury Proceedings State of Ohio* v. *John Doe, 14-MA-73.* (Exhibit 3, Certificate of Assignment).
11. Respondent heard the case and contributed to the Decision, which is sealed.
12. On December 20, 2015, Complainant Shamir Coll graduated from The University of Toledo law school.
13. In February of 2016, Mr. Coll was barred from taking the Ohio Bar Exam by the Supreme Court's Board of Character and Fitness.
14. In June of 2016 Respondent once again solicited ethics advice regarding potential conflicts with the Attorney General's office, this time from Columbus attorney Michael Close, who concluded that Respondent would only have to recuse himself when "Mike

DeWine is directly representing a party by appearing before Judge Pat DeWine in any proceeding in the matter." (Exhibit 4, Close letter #1).

15. On July 7, 2016, a panel of the Ohio Supreme Court Board of Commissioners on Character and Fitness filed a Report and Recommendation in the Coll matter. The panel concluded that Mr. Coll was not yet fit for admission to the Bar and recommended that he not be permitted to re-apply to take the exam until the deadline established to take the July 2019 bar examination. (Exhibit 5, Panel Report). Mr. Coll appealed this Report and Recommendation.
16. On August 18, 2016, the Chair of the Board of Commissioners on Character and Fitness filed his Findings of Fact and Recommendation, approving the Panel's recommendation and adding that Mr. Coll also undergo a complete character and fitness investigation upon reapplication to take the bar exam. (Exhibit 6, Hicks Findings).
17. On October 17, 2016, Jonathan Coughlan, then in private practice but formerly the Disciplinary Counsel of the Supreme Court of Ohio, having served from 1997 to 2013, issued an ethics opinion regarding Respondent's hearing and deciding cases where his father's public law firm was involved. This Opinion was for the Ohio Democratic Party and addressed to its Chair, David Pepper. Mr. Coughlan, who was on the task force that drafted the Judicial Canons at issue here, concluded that Respondent should "recuse from all cases where a member of the Attorney General's office is appearing as counsel or was filing an Amicus brief." (Exhibit 7, Coughlan Letter).
18. In direct response to the Coughlan letter, Respondent once again sought an opinion from attorney Michael Close. On October 25, 2016, Mr. Close re-affirmed his 2014 conclusion that Respondent need recuse "only when Attorney General Mike DeWine is personally involved." (Exhibit 8, Close Letter #2).
19. Respondent took the bench on Ohio's Supreme Court in January of 2017. Shortly thereafter, on January 11, 2017, Mr. Coll argued before the Supreme Court his appeal of the August 18, 2016, Board of Commissioners on Character and Fitness Recommendation (Exhibit 6). Respondent heard the case and was involved in the oral argument. He asked Mr. Coll questions but apparently did not question the assistant Attorney General who was representing the Board.
20. Two months later, on March 6, 2017, Respondent recused himself from two Pike County cases, *St. of Ohio ex rel., Gatehouse Media Ohio Holdings II, Inc. d/b/a The Columbus*

Dispatch v. Pike County Coroners Office, Ohio Supreme Court Case 2016-1153, and *St. ex rel. Cincinnati Enquirer v. Pike County Coroners Office, Ohio Supreme Court Case 2016-1115.* He told SDC on October 31, 2017 that he recused due to his father's "involvement" in those cases.

21. On March 17, 2017, Mr. Coll filed his Complaint against Respondent. (Exhibit 9, Complaint).

22. The Office of Disciplinary Counsel, in accordance with Rule II, Section 2(B) of the Ohio Rules of Judicial Conduct, reviewed Coll's Complaint to determine if an ethical violation was alleged. It determined that there was such an allegation and forwarded the matter to The Ohio Courts of Appeals Judges Association, pursuant to Gov. Jud. R II, Section 4. The Chief Judge of that Association, Donna Carr, appointed a three judge panel to review the grievance, as required by the rule.

23. On April 3, 2017, attorney Stephen P. Hanudel, counsel to Robert L. Johnson in *Johnson v. Sloan, Ohio Supreme Court Case 2016-1284,* filed with the Supreme Court Clerk a request that Respondent recuse from this case because the A.G.'s office, by Stephanie Watson, represented Defendant Brigham Sloan, a prison Warden. Mr. Hanudel pointed out that Watson works for A.G. DeWine and that "there is no way to objectively know whether Attorney General DeWine had any discussion about the case that would not necessarily be documented" and that the "mere appearance of impropriety" mandates the recusal of Respondent. Mr. Hanudel noted that Attorney General DeWine is the "first attorney of record for Warden Sloan." (Exhibit 10, Hanudel letter).

24. The very next day, April 4, 2017, Respondent replied to the Hanudel recusal request with the filing of a letter with the Supreme Court Clerk. Respondent wrote "I have reviewed the request and accompanying affidavit. Finding the request without merit, I will continue to participate in the case." (Exhibit 11, DeWine letter).

25. On Sunday night, April 23, 2017, Respondent sent an email from his personal account to the personal email account of Joe Deters, the Hamilton County Prosecutor, and asked if Mr. Deters "Can ...find a spot in your internship program for my son, Matt this summer. I've attached his resume. He is a freshman at Miami." "If you can, I would really appreciate it." (Exhibit 12, DeWine email).

26. Forty six minutes later Mr. Deters responded "Another....for sure." (Exhibit 12, email).

27. Matt DeWine was hired by Mr. Deters as a paid intern for the summer of 2017. Matt DeWine was not a law student; he was a freshman in college. The Hamilton County Prosecutor's Office is a public agency, thus Matt DeWine was hired under a public contract, as was his brother, a law student who was also a paid intern for Mr. Deters both prior to and during the summer of 2017.
28. On the date of Respondent's request that Mr. Deters hire his son the Hamilton County Prosecutor's office had cases filed with and pending before the Supreme Court of Ohio.
29. Prosecutor Deters' office currently has forty eight open cases before the Ohio Supreme Court, consisting of thirty nine jurisdictional appeals and nine other cases, including one death penalty case. Mr. Deters' office will likely be involved in many more cases before the Supreme Court during Respondent's tenure.
30. In May of 2017 Matt DeWine commenced employment with Mr. Deters' office.
31. On May 31, 2017, the Supreme Court, by the Chief Justice, issued its Decision and Order in the Coll bar examination matter.
32. On June 25, 2017, Attorney General Michael DeWine declared his candidacy for Governor of Ohio.
33. The next day, June 26, 2017, Mike DeWine for Governor posted a YouTube video that includes Respondent, sitting in the front row of a family picture. https://www.youtube.com/watch?v=A0osZSYRylw. (Exhibit 13a & b).
34. Five days later, June 30, 2017, the three judge panel assigned to investigate the Coll matter by Chief Judge Carr, requested additional information from Respondent's counsel regarding the Coll grievance.
35. Respondent's counsel complied with the Panel's request on July 19, 2017.
36. On August 14, 2017, Attorney General DeWine's office filed an amicus brief in *Johnson v. Sloan, Ohio Supreme Court Case* 2016-*1284*.
37. On August 14 and then on August 15, 2017, two Cincinnati newspapers published the email exchange between Respondent and Mr. Deters. (Exhibit 12).
38. The office of the Attorney General often performs investigations of public contract cases. As of the filing of this Complaint, SDC is unaware of any actions by Attorney General DeWine to investigate the public contract involving his son and grandson.

39. On August 16, 2017, the three judge Panel investigating the Coll grievance concluded "that good cause exists for further investigation of the grievance." (Exhibit 14, Panel Letter).

40. Consequently, in accordance with Rule II, Section 4 of the Ohio Supreme Court's Rules of the Government of the Judiciary, Chief Judge Carr, on September 15, 2017, appointed Special Disciplinary Counsel (SDC).

41. On October 31, 2017, SDC met with Respondent and his counsel to discuss the issues raised by the Coll grievance and Respondent's recusals and requests for recusal. Respondent twice declared that he would not recuse from cases involving the Attorney General's office unless his father was personally involved in the case or Respondent himself deemed it appropriate to recuse. Respondent has not explained how he would know if his father was "personally involved" or what criteria he would use to deem it "appropriate" to recuse.

42. In 2017 Attorney General DeWine's public web site contained the Exhibit 2 photograph of both the Attorney General and Respondent; however, the "Mike DeWine *Ohio Attorney General* logo is stamped (overlaid) on the photograph (Exhibits 15a and b), which was found on the home page, in rotation, at http://www.ohioattorneygeneral.gov for many months, and is currently found in two places on the Attorney General's web site - the biography section at http://www.ohioattorneygeneral.gov/About-AG/Mike-Dewine, and at www.ohioattorneygeneral.gov/About-AG/AG-Administration.

43. In addition, Attorney General Michael DeWine has the Exhibit 2 photograph of him and Respondent, as well as two additional photos of them together on his personal Facebook page, which is accessible by the general public at https://www.facebook.com/pg/MikeDeWine/photos/?tab=album&album_id=10150703034577235. (Exhibits 16a, b, c and d, Screen shots).

44. Since Respondent has been a member of the Ohio Supreme Court he has heard the following cases in which the Ohio Attorney General has been a ***party***: *St. of Ohio, ex. rel. Michael DeWine, Attorney General v. Joel Helms, et. al.,* Jurisdictional Appeal, *Ohio Supreme Court Case 2017-1347; St. ex rel. Rocky Brillhart v. Mike DeWine, Ohio Attorney General,* Original action in Mandamus and prohibition, *Ohio Supreme Court Case 2017-1162; St. of Ohio ex rel. Michael DeWine, Ohio Attorney General v. Omar Ibn El Khattab Mosque, Inc.,* Direct Appeal, *Ohio Supreme Court Case 2017-1067; George Daher v. Mike*

DeWine, Ohio Attorney General, Joseph Dietz, and Michelle Y. Roach-Haver, Original Action in Mandamus and Prohibition, *Ohio Supreme Court Case 2017-0544.*

45. Attorney General Michael DeWine did not personally appear before Respondent in any of the above cases where the Attorney General's office was a **party** in the case; it is unknown what his role was in these cases outside of the courtroom.

46. Since taking the Supreme Court bench Respondent has heard cases where the Attorney General's Office has been **counsel of record** to a party. As of January 12, 2018, the Attorney General was counsel of record in 260 cases out of 1,881 cases filed with the court, or 13.82% of the total.

47. Attorney General Michael DeWine did not personally appear before Respondent in any of the above cases; it is unknown what his role was outside of the courtroom. Respondent admitted at a meeting with SDC on October 31, 2017, that he does not know what his father's role was in those cases where the Attorney General was **counsel of record.**

48. Images and video of Respondent with the Attorney General are found on the Attorney General's official web site, on a campaign web site, and on both of their personal and professional social media accounts.

49. As of the filing of this Complaint, Attorney General Michael DeWine's Facebook page still contains the photographs that are Exhibits 2, 13b, 15a&b, & 16a, b, c, & d, including a photo of the Attorney General with the Respondent at a black tie event posted on March 17, 2017. This photo and this Facebook page are accessible to the general public. https://www.facebook.com/MikeDeWine/photos/a.208785902234.130461.517630522 34/10155185621502235/?type=3&theater.

50. As of the filing of this Complaint if one "Googles" Michael DeWine the first thing that appears is the "about-AG/Mike-DeWine" page. It shows Respondent's picture to the immediate right of the search results. (Exhibit 17). Clicking on the YouTube link takes you to a video, where Respondent is seen 39 seconds into the "DeWine for Governor" video. https://www.youtube.com/watch?v=A0osZSYRylw

51. As of the filing of this Complaint pictures of both Respondent and his father, together, are found on Twitter at both of their personal accounts. These accounts are accessible to the public. https://twitter.com/patdewine?lang=en; https://twitter.com/mikedewine?lang=en (Exhibits 18, (Respondent's Twitter page), 19

(Mike DeWine Twitter page), 20a & b (Respondent's Twitter feed), 21a, b, & c (Mike DeWine Twitter feed).

COUNT 1: CASES BEFORE THE OHIO SUPREME COURT

52. Canon 1 of the Ohio Code of Judicial Conduct states that "A judge shall uphold and promote the *independence, integrity*, and *impartiality* of the judiciary, and shall avoid *impropriety* and the appearance of *impropriety*." (Emphasis in original). The purpose of this Canon is to promote confidence in the Judiciary, and it requires that "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." (Jud. Cond. R. 1.2).
53. No actual impropriety has been alleged regarding the cases Respondent has heard while on the Supreme Court. However, *independence, integrity, impartiality* and the *"appearance of impropriety"* are at issue. The test for *appearance of impropriety* is an objective test: it focuses on whether the judge's conduct would create, "in reasonable minds," a perception that the judge engaged in conduct that is **prejudicial to public confidence in the judiciary**, or engaged in conduct that reflects on the judge's **"impartiality."** (Gov. Jud. R. 1.2, comment [5]).
54. Canon 2 states that "A judge shall perform the duties of judicial office *impartially*, competently and diligently." (Emphasis in original).
55. While on Ohio's highest court Respondent has heard at least four cases in which his father, the elected Attorney General and now candidate for governor, was a named party. Reasonable minds could conclude that there is at least the *appearance of impropriety* when Respondent hears and decides his father's cases, especially in this sensitive time period when his father is also running for governor. **To conclude that the father-son relationship has no impact on Respondent would be to ignore basic human nature.**
56. Public confidence in the judiciary has been negatively impacted by Respondent hearing and deciding his father/AG/gubernatorial candidate's cases, even if Michael DeWine did not personally appear before Respondent in any of those cases.
57. By failing to recuse himself from all cases in which his father, or his father's office, has appeared as either a named party or as counsel to a party, Respondent has violated the following Canons of the Ohio Code of Judicial Conduct:

a. **Canon 1.** For failing to uphold and promote the *independence, integrity, and impartiality* of the judiciary.

b. **Canon 2.** For failing to perform the duties of the office *impartially*, specifically:

   i. Rule 2.2: **Impartiality and Fairness**. "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and *impartially*." (Emphasis in original). "A judge must be objective and open-minded." Jud. Cond. R. 2.2, comment [1].

   ii. Rule 2.4: **External Influences on Judicial Conduct**. (A) "A judge shall not be swayed by public clamor or fear of criticism;" (B) "A judge shall not permit **family...political**....or other interests or relationships to influence the judge's judicial conduct or judgment;" and (C) "A judge shall not convey or **permit others to convey** the impression that any person or organization is in a position to influence the judge."

   iii. Rule 2.11: **Disqualification.** (A) "A judge shall disqualify himself or herself in any proceeding in which the judge's *impartiality* might reasonably be questioned, including but not limited to the following circumstances:"

      1. "The judge has a **personal bias** or prejudice concerning a **party**..."
      2. "The judge *knows* that (he)...or a person within the *third degree of relationship*...is...A **party to the proceeding**, or an officer (or) director...of a party; **acting as a lawyer in the proceeding**; or...has more than a **de minimis interest** that could be substantially affected by the proceeding;"

      Comment [4] to Rule 2.11 states that: The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. **If, however, the judge's impartiality might reasonably be questioned under division (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under division (A) (2) (c), the judge's disqualification is required.**

58. Respondent has allowed his father, through both the Attorney General's Office and his personal gubernatorial campaign, to convey the impression that he is in a position to

influence Respondent. Respondent attends public events with his father, and his image is used as part of his father's public office web site and his father's political and social media presence. These simultaneous family and political relationships may create, in the mind of a reasonable observer, an appearance of impropriety. Respondent has violated Rule 2.11 for failing to recuse himself under circumstances in which Respondent's impartiality was reasonably questioned.. Respondent's interest in the outcome of the Attorney General's cases before him could be construed to be more than *de minimis*, especially given his father's gubernatorial candidacy in an imminent election. Respondent's recusal is required in cases in which the Attorney General's Office is a party or represents a party before the Supreme Court, pursuant to Rule 2.11(A)(2).

a. **Canon 4:** A judge....shall not engage in political or campaign activity that is inconsistent with the *independence, integrity, or impartiality* of the judiciary.

Rule 4.1 Political and Campaign Activities of Judges and Judicial Candidates states that a judge....shall not do any of the following:

> (3) Publicly endorse or oppose a candidate for another office;
>
> (6) Make any statement that would reasonably be expected to affect the outcome of impair the fairness of a matter pending or impending in any court.

While Respondent has not made a written or verbal statement publicly endorsing his father for Governor, his likeness appears on his father's AG web site in two places, on his father's DeWine for Governor/personal web site in at least three places and right next to the Mike DeWine Google search results (where Respondent appears in his judicial robe). "Reasonable minds" could conclude that these appearances and images are public endorsements by Respondent for his father's gubernatorial candidacy.

59. Respondent has withdrawn from only two of his father/AG/gubernatorial candidate's cases while on the Supreme Court, and those two cases emanate from the same matter. In failing to recuse from others he has engaged in activity that is inconsistent with the independence, integrity and impartiality of the court and therefore he has violated Canon 4.

COUNT 2: HANUDEL

60. On April 3, 2017, attorney Hanudel filed a request that Respondent recuse from a case he had before the Supreme Court. (Exhibit 10, Hanudel letter). Mr. Hanudel raised the conflict issue involving Respondent's father, who was counsel of record to a party in the case. Respondent denied the request to recuse the very next day and proceeded to hear the case. (Exhibit 11, Respondent letter).
61. In failing to step aside in this matter Respondent violated **Canon 1** by acting in a manner that damaged public confidence in the "independence, integrity, and impartiality of the judiciary."
62. In failing to step aside Respondent also violated **Canon 2** by:
    a. Failing to perform all duties of the office "fairly and *impartially*," and by
    b. Allowing the DeWine for Governor campaign to "convey the impression that (it) is in a position to influence the judge," given the multiple pictures on the Attorney General's web site and on Michael DeWine's personal, publicly accessible, "DeWine for Governor," Facebook page. (Exhibit 16a,b,c&d), and by
    c. Knowing that a person "within the third degree of relationship" to him might have "more than a *de minimus* interest that could be substantially affected by the proceeding." Ohio Jud. R. 2.11 (A)(2).
63. In failing to step aside Respondent has violated **Canon 4** because:
    a. His relationship and his likeness on both his father's Attorney General web site and Facebook page could be construed by reasonable minds to be an endorsement of a candidate. Rule 4.1(A)(3), and
    b. His relationship and his likeness displayed publicly on both his father's Attorney General web site and Facebook page could be construed by reasonable minds to **"affect the outcome or impair the fairness of a matter pending or impending in any court."** Rule 4.1 (A)(6).

COUNT 3: COLL GRIEVANCE

64. On January 11, 2017, oral arguments were held before the Supreme Court regarding law school graduate Shamir Coll's character and fitness eligibility to take the Ohio Bar Exam. Respondent heard the case and was involved in the oral argument. He asked Mr. Coll questions but apparently did not question the assistant Attorney General who was representing the Board.
65. Respondent has no duty to question any of the parties before him. He did not commit a violation of the Canons by failing to question the Assistant Attorney General.
66. However, Respondent's hearing and ruling on his father/AG/Gubernatorial candidate's cases is a violation of **Canon 1** of Ohio's Code of Judicial Conduct because Respondent did not "act at all times in a manner that promotes public confidence in the *independence, integrity, and impartiality* of the judiciary" and because Respondent did not "avoid...the appearance of *impropriety*." Ohio Cond.R.1.2.
67. In addition, Respondent violated **Canon 2** by not performing "the duties of judicial office *impartially*," in accordance with Jud. Cond. R. 2.2, and by potentially permitting **"family**...social, **(or) political interests or relationships to influence the judge's judicial conduct or judgment."** Reasonable minds could conclude that Respondent wants his father elected governor and that any ruling *against* his office could be detrimental to his father's candidacy. Mr. Coll, and all other litigants before the Supreme Court, are entitled to an impartial hearing, in both appearance and reality. When Respondent hears cases in which his own father is the attorney of record, litigants are deprived of the guarantee of impartiality.

COUNT 4: DETERS

68. On April 23, 2017, Respondent asked Prosecutor Deters to "find a spot in your internship program for my son, Matt this summer" and stated that he "would really appreciate it" if Deters would hire him. (Exhibit 12, email). Deters, who had several cases pending before the Ohio Supreme Court, hired Matt DeWine as a paid intern in the Hamilton County Prosecutor's office.
69. Matt DeWine is Respondent's family member.
70. Matt DeWine's employment by Deters constitutes a "public contract."

71. Respondent knowingly employed the influence of his position to secure this public contract.

72. The email exchange between Respondent and Deters (Exhibit 12) was made public when CityBeat published their article on August 14, 2017, followed by the Cincinnati Enquirer article of August 15, 2017.

73. In asking Deters to hire his son, Respondent violated **Canon 1**, by acting in a manner that damages the public's confidence in the *independence, integrity, and impartiality* of the judiciary, because:

    a. The request was improper for a high ranking public official; there is, at a minimum, an appearance of impropriety. A reasonable person, observing that Respondent solicited and accepted a personal favor from a prosecutor who has cases pending before the Supreme Court, at that moment and in every year, could reasonably conclude that Respondent engaged in conduct that reflects adversely on his impartiality;

    b. Respondent abused the prestige of his judicial office to advance his son's personal and economic interests, by soliciting Deters for this favor, with the knowledge that such a request from Respondent, by virtue of Respondent's office, put Deters in an awkward position. A reasonable observer could conclude that Deters said "yes," either because he had no choice or to curry favor with the Justice; and

    c. When criminal defendants in Hamilton County take their cases to the Supreme Court, they now do so with the knowledge that their prosecutor has done personal favors for Respondent and his family, and that their attorneys must compete against the influence, however large or small, of Respondent's own children. The public cynicism engendered by this arrangement is the primary danger which Canon 1 seeks to avoid.

74. In asking Deters to hire his son, Respondent violated **Canon 2**, by:

    a. Calling into question his *impartiality*, objectivity and open-mindedness when dealing with the Hamilton County Prosecutor's office and by

    b. Potentially permitting his "**family...interests or relationships to influence the judge's judicial conduct or judgment,**" and by

    c. Allowing his actions to convey the impression that a person or organization (the Hamilton County Prosecutor) is in a position to influence Respondent. By soliciting a

personal favor from a prosecutor's office, Respondent has allowed the perception that the Hamilton County Prosecutor's Office could get favorable treatment, perhaps even a quid pro quo trade, from a Justice on the Supreme Court. **Respondent should not be soliciting personal favors for his family from the head of a public office who regularly appears before him.**

75. In asking Deters to hire his son, Respondent violated **Canon 3**, by engaging in conduct that failed to minimize the risk of conflict with the obligations of his office, to wit;
    a. Respondent's activities (successfully soliciting a job for his son) could easily appear to a reasonable person to undermine the judge's *independence, integrity, or impartiality*, in violation of Rule 3.1(C).
    b. Respondent has created a situation which "could give rise to an unlawful interest in a public contract" as set forth in Comment 1 to Rule 3.1, and as prohibited by R.C. 2921.42, which states that **"no public official shall knowingly...employ the authority or influence of the public official's office to secure authorization of any public contract in which...a member of the public official's family...has an interest."** Employment with the prosecutor's office is a public contract, and by using his position to solicit such employment for his son, Respondent created a situation which could lead to a violation of R.C. 2921.42.
76. In soliciting employment for Matt DeWine Respondent acted contrary to Ohio Ethics Opinion 2010-03 which states in part that: "Public officials and employees cannot: (a) ...use their position to secure employment for their family members; or (b) recommend...their family members for public jobs with....public agencies;" (Exhibit 22, OH Eth. Op. 2010-03).

CONCLUSION:

77. Respondent has an inherent conflict of interest whenever his father's office is involved in any matter before the Supreme Court. Michael DeWine is more than Respondent's father and the attorney for the State of Ohio; he is also a candidate for Governor. Consequently, the appearance of impropriety is heightened and unavoidable. Both Respondent and his father have more than a *"de minimis"* interest in the outcome of every case where Respondent's father or his office is involved. It is difficult to imagine that Respondent is *impartial* where his father is involved, but even if he could be

impartial there is an *appearance of impropriety,* at the very least. Reasonable minds could easily conclude, especially in this politically sensitive time leading to the gubernatorial election, that the son will side with the father, no matter the issue. Public confidence in the judiciary, especially Ohio's highest court, is impacted when Respondent hears and rules upon his father's office's cases. **A reasonable mind could conclude that a litigant appearing before the Supreme Court, opposite an assistant attorney general will not get an impartial decision from Respondent.**

78. Respondent also has an inherent conflict of interest when the Hamilton County Prosecutor's office is involved in any matter before the Supreme Court, as both of his sons were paid interns there, and he solicited his youngest son's employment. Consequently, there is at least an appearance of impropriety. **A reasonable mind could conclude that a litigant appearing in the Supreme Court opposite the Hamilton County Prosecutor will not get an impartial decision from Respondent.**

79. Activities that would appear to a reasonable person to undermine a judge's *integrity, independence and impartiality,* may lead to *frequent disqualifications*. Canon 3 makes it clear that this situation should be avoided; consequently Respondent should avoid participating in any case where either his father's office or the Hamilton County Prosecutor's office is involved. If Respondent recuses from these cases, replacement Justices are easily assigned. The time period in which the Respondent will need to periodically recuse himself is short, as the inherent conflict Respondent has with his father will cease in less than a year; the conflict with the Hamilton County Prosecutor's Office is not as frequent and can easily be avoided.

80. Respondent's use of his position to secure employment for his son in a public agency (that has cases before Respondent) is contrary to OH. Eth. Op. 2010-03 and possibly R.C. 2921.42.

81. Wherefore, Special Disciplinary Counsel requests that:

    a. Respondent recuse from all cases before the court in which his father's office is involved in any way, and

    b. Respondent not rule on any such case pending before the court that awaits decision, and

    c. Respondent not cast any vote regarding the acceptance or hearing of any such case filed with the court but not yet accepted, and

d. Respondent recuse from all cases involving the Hamilton County Prosecutor's Office during Mr. Deters' tenure, and

e. Respondent be sanctioned for violating Canons 1-4 of the Code of Judicial Conduct.

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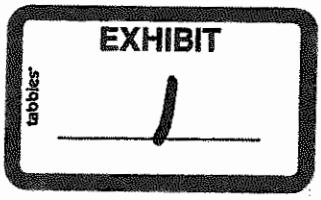

From: Pat DeWine [mailto:PDeWine@cms.hamilton-co.org]
Sent: Thursday, November 04, 2010 3:28 PM
To: Marshall, Jonathan
Subject: Jon,

Jon,

This email follows up on the phone conversation we had earlier today. As we discussed, my father has been elected Attorney General of Ohio and I am looking for guidance on how I should handle cases -- and specifically -- whether recusal is required in cases where the Attorney General's office is representing the State or one of its agencies or Boards.

As you know, there are a number of different types of cases in which the AG's office may be involved. Most typically, in our court I see workers compensation cases where the AG represents the BWC, cases involving tax liens and cases where there are Medicare/Medicaid subrogation claims. Of course, there are countless other possible ways the AG could be involved as well. If I were to excuse myself from every case where the AG is involved it would be a fairly large percentage of my docket. For example, workers compensation cases alone account for roughly 10% of my civil docket.

I would certainly excuse myself in cases in which the Attorney General himself was involved or in cases in which the Attorney General personally had a particular interest. I am more concerned about the more "garden variety" cases that are handled as a matter of routine by staff attorneys in the Attorney General's Office.

I note that Rule 2.11(A)(2) states that a Judge should excuse himself when one within the third degree of relationship is an attorney or party. Comment 4 to Rule 2.11, however, suggests that a Judge need not excuse himself when he is related to a member of an attorney's law firm. Arguably, at least, the Attorney General situation would seem to be analogous to the law firm situation although it differs somewhat in that the Attorney General is specifically listed on the pleadings.

Any guidance you can provide in this matter would be greatly appreciated.

Thanks,

Pat DeWine

EXHIBIT
tabbies
2

The Supreme Court of Ohio

Hon. Richard Patrick DeWine
First District Court of Appeals
230 East Ninth Street, 12th Floor
Cincinnati, OH 45202

CERTIFICATE OF ASSIGNMENT

The Honorable Richard Patrick DeWine, a judge of the First District Court of Appeals, is assigned effective November 24, 2014, to preside in the Seventh District Court of Appeals, to hear case 14-MA-73, In re: Grand Jury Proceedings State of Ohio v. John Doe and to conclude any proceedings in which he participated.

Maureen O'Connor
Chief Justice

14JA2759

isaac wiles
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June 14, 2016

Hon. Richard P. DeWine
First District Court of Appeals
230 East Ninth Street
Cincinnati, OH 45202

Dear Judge DeWine:

You have asked us to provide an opinion regarding whether there is any ethical conflict with a judge presiding over cases in which the Attorney General, who is a relative of the judge, appears before him/her in a case.

You have also asked us to provide an opinion regarding whether there is any ethical conflict with a judge, who is a relative of the Attorney General, presiding over cases in which an Assistant Attorney General appears before him/her in a case. In this instance, "relative" is defined as a spouse, child, parent or sibling.

As a general rule, a "judge shall disqualify himself in any proceeding in which the judge's impartiality might reasonably be questioned." Ohio Code of Judicial Conduct 2.11(A). While this is the general rule, certain situations arise that may follow this rule or may be an exception to the rule. These situations are addressed below (for your reference, we have included with this letter the rule and the cited ethics opinions).

- **Conflicts with a judge presiding over cases in which the Attorney General, who is a relative of the judge, is representing a party.**

It is our opinion that a conflict of interest does arise when a judge is presiding over cases in which a relative is directly representing a party and appearing before the judge. A judge should step aside if a reasonable observer "would harbor serious doubts about the judge's impartiality." *In re Disqualification of Lynch*, 135 Ohio St.3d 1208, 2012-Ohio-6305, 985 N.E.2d 491, ¶ 8. The closer the relationship between the judge and representing party, the more

tempted a judge may be "to depart from the expected judicial detachment or to reasonably appear to have done so." *Id.*

In the question posed, Judge Pat DeWine should disqualify himself from presiding over cases in which his father and Attorney General, Mike DeWine, is directly representing a party by appearing before him. A father-son relationship is one that may tempt a judge to depart from his expected judicial detachment. A reasonable person may have serious doubts about Judge Pat DeWine's impartiality or fairness in presiding over the case. It is our opinion that Judge Pat DeWine should disqualify himself from presiding over cases in which his father, Mike DeWine, is directly representing a party by appearing before him in any proceeding in a matter.

- **Conflicts with a judge presiding over cases in which a party is directly represented by an assistant Attorney General, and the judge's relative is the Attorney General**

Although Ohio courts and the Board of Professional Conduct have not addressed this specific issue before, other states have addressed analogous conflicts that help shed light on this particular issue. Opinion 90-197 from the New York judicial ethics code states that a judge who had been represented, previously, by an Assistant Attorney General in a mater related to his judgeship does not have to recuse himself in a trial in which an assistant Attorney General is directly representing a party as long as the assistant Attorney General in the present case was not the individual who previously represented the judge.

Opinion 98-14 from the New York judicial ethics code voiced a similar opinion as the one above, adding that "it cannot be said that there is a unity of interest among Assistant Attorneys General... so as to require disqualification." A judge need only disqualify himself when a member of the Attorney General staff, who previously represented the judge, appears before the judge "personally or 'on papers.'" This extends to any staff member that may have "participated" in the previous representation of the judge.

The Arizona Supreme Court Judicial Ethics Advisory Committee has also offered an opinion on a similar matter. Advisory Opinion 02-05 stated that "the appearance of partiality is significantly diminished" when another assistant attorney general appears before the judge other than the one that has or is representing the judge in a matter. The Advisory Committee explained, "The Attorney General employs hundreds of attorneys. Absent actual bias, it is not necessary that the judge disqualify in all cases involving that office during the pendency of the representation."

Opinion JE99-007 from the Nevada judicial ethics is consistent with the other states above, ruling that "judges are not required to disqualify themselves" in matters handled by a non-representing member of the Attorney General's Office.

In a similar vein, *In re Jacobs* held that a Minnesota judge did not have to disqualify himself from a trial in which his wife's office was prosecuting the case. *In re Jacobs*, 791 N.W.2d 300, 302 (Minn. 2010). The court held that as long as the judge's wife was "not personally involved in a case," the judge was not required to disqualify himself. *Id.*

It is our opinion, thus, that Judge Pat DeWine will not have an ethical conflict and will not have to disqualify himself in a case where someone other than Mike DeWine at the Attorney General's Office is directly representing a party in a case before the Judge. Judge Pat DeWine must disqualify himself only in cases where Mike DeWine is directly representing a party by appearing before Judge Pat DeWine in any proceeding in the matter.

If you have any further questions, please let us know.

Sincerely,

Michael Close

cc: Joanne S. Beasy, Esq.

RULE 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's *impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal *knowledge* of facts that are in dispute in the proceeding.

(2) The judge *knows* that the judge, the judge's spouse or *domestic partner*, or a person within the *third degree of relationship* to either of them, or the spouse or *domestic partner* of such a person is any of the following:

(a) A party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) Acting as a lawyer in the proceeding;

(c) Has more than a *de minimis* interest that could be substantially affected by the proceeding;

(d) Likely to be a material witness in the proceeding.

(3) The judge *knows* that he or she, individually or as a *fiduciary*, or the judge's spouse, *domestic partner*, parent, or child, or any other member of the *judge's family residing in the judge's household*, has an *economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) [RESERVED]

(5) The judge, while a judge or a *judicial candidate*, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge *knows* that the judge's spouse or *domestic partner*, or a person within the *third degree of relationship* to either of them, or the spouse or *domestic partner* of such a person has acted as a judge in the proceeding.

(7) The judge meets any of the following criteria:

(a) The judge served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) The judge served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the particular matter, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) The judge was a material witness concerning the matter;

(d) The judge previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and *fiduciary economic interests*, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or *domestic partner* and minor children residing in the judge's household.

(C) A judge subject to disqualification under this rule, other than for personal bias or prejudice under division (A)(1) of this rule, may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Comment

[1] Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of divisions (A)(1) to (6) apply. A judge's knowledge that a lawyer, law firm, or litigant in a proceeding contributed to the judge's election campaign within the limits set forth in Rules 4.4(J) and (K), or publicly supported the judge in the campaign, does not, in and of itself, disqualify the judge.

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's

impartiality might reasonably be questioned under division (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under division (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] [RESERVED]

Comparison to Ohio Code of Judicial Conduct

Rule 2.11 is comparable to Ohio Canons 3(E) and (F) with the exception of Rule 2.11(A)(5), which has no comparable provision in the Ohio Code.

Comparison to ABA Model Code of Judicial Conduct

With two exceptions, Rule 2.11 is comparable to Model Rule 2.11. Division (A)(4), relative to the disqualification of a judge who receives a campaign contribution in excess of a specific amount, is not adopted, in part because Rule 4.4 contains what are considered reasonable contribution limits applicable to individuals and organizations, including parties, lawyers, and law firms.

Division (A)(6) is new language that addresses disqualification when a judge's spouse has previously acted as a judge in the same proceeding. This provision is comparable to Ohio Canon 3(E)(1)(d)(iii) but is not found in the Model Code.

Comment [1] is modified to remove a reference to the fact that some jurisdictions use interchangeably the terms "recusal" and "disqualification" and to indicate that the mere receipt of a campaign contribution within the permissible limits set forth in Rule 4.4 is not grounds for disqualification. Comment [6] is stricken because it merely restates the definition of "economic interest" found in the Terminology section.

Opinion 90-197

January 24, 1991

Digest: A judge who was represented as part of a group of judges in federal court by the Attorney General's office need not recuse himself or herself in a trial prosecuted by an assistant attorney general, if that attorney was not the lawyer who represented the judge in the federal case.

Rules: 22 NYCRR §§100.2; 100.3(c)

Opinion:

A judge who is presiding over a labor law matter prosecuted by the New York State Attorney General's office, asks if it is proper to preside where the Attorney General's office represented the judge as part of a group of judges in a different federal action.

Based upon the facts presented we perceive no ethical bar to the judge retaining this case. The representation of the judge as one of a class of judges by the Attorney General's office does not ethically preclude the judge from presiding over the instant case, provided that the assistant attorney general prosecuting the labor law case is not the same individual who represented the judge in federal court. The judge, however, should recuse himself or herself if the same assistant attorney general appears (22 NYCRR 100.2; 100.3[c]); see also, Advisory Committee on Judicial Ethics, Opinion 90-56, Vol. V). If the labor law case is being handled by another assistant from the Attorney General's office, the judge may preside over the case.

Opinion: 98-14

January 29, 1998

Digest: A judge who is being represented by the Attorney General of New York in a Federal District Court action must recuse in cases in which the attorney(s) handling that matter appear before the judge, but need not recuse in cases where the representation is by other assistant attorneys general.

Rules: Public Officers Law §17; 22 NYCRR 100.3(A)(1).
Opinions 94-11 (Vol. XII), 93-61 (Vol. XI), 91-10 (Vol. VI).

Opinion:

The inquiring Supreme Court justice states that in 1992 he/she had "conducted a hearing in an action for monies claimed to be due by a former spouse. I awarded a Judgment and that determination was affirmed by the Appellate Division _____, Department," Other actions involving the ex-husband were before a different Supreme Court justice. Dissatisfied with the results of those actions, the ex-husband wrote to the inquirer requesting that the judge "take action which would have affected the determination of the other Supreme Court Justice. Needless to say, I declined. He thereafter commenced an action in the Federal Court against me. I am being represented by the Attorney General of the State of New York.." The particular attorney representing the judge is in charge of the local office of the Attorney General.

The judge asks "whether as a Justice I may hear cases in which the Attorney General represents one of the parties..."

Section 100.3(A)(1) of the Rules Governing Judicial Conduct requires a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned..." Clearly, where the particular attorney on the Attorney General's staff who is handling the matter appears before the judge, whether personally or "on papers", an inference of partiality and an appearance of impropriety could readily arise, and the judge should exercise recusal. This would extend to any other attorney on the staff with whom there may have been consultation or who otherwise participated in the case (see Opinion 94-11 [Vol. XII]) and would apply as well to uncontested matters being handled by the attorney(s). However, there is no necessity for recusal in matters in which the appearance is by a member of the Attorney General's staff who had no involvement in the representation of the judge in the Federal Court action. Representation by the office of the Attorney General is not to be analogized to that of representation of a judge in a

personal matter by a law firm, where disqualification might be required whenever any member of the firm appears. See e.g. Opinion 93-61 (Vol. XI), 91-10 (Vol. VI).) The representation of a judge by the Attorney General in the circumstances stated, is required by law (Public Officers Law §17); and it cannot be said that there is a unity of interest among Assistant Attorneys General throughout the State as there presumably is among members of a private law firm, so as to require disqualification.

BEFORE THE BOARD OF COMMISSIONERS
ON CHARACTER AND FITNESS OF
THE SUPREME COURT OF OHIO

IN RE:	)	
	)	
APPLICATION OF	)	**CASE NO. 643**
SHAMIR LEE COLL	)	

PANEL REPORT AND RECOMMENDATION

STATEMENT OF THE CASE

Applicant, Shamir Lee Coll, is a December 2015 graduate from the University of Toledo, College of Law. He applied to sit for the February 2016 bar examination and had received final approval from the Admissions Committee of the Toledo Bar Association in January 2016. His application was pulled for further investigation pursuant to the Board's *sua sponte* authority in accordance with Gov. Bar Rule I, Section 10, Div. (B)(2)(e) of the Ohio Supreme Court Rules for the Government of the Bar of Ohio. The Board's Review Committee believed further investigation was warranted because of Mr. Coll's incomplete answers on Form 5T of his bar application and his apparent lack of cooperation in providing information as called for during the application process.

A hearing was held on April 28, 2016 before a three-member panel of the Board consisting of Suzanne Richards, Judge Denise Moody and John Fairweather, Chairperson. The Toledo Bar Association was represented by Keathley Sparrow, Chair of the Toledo Bar Association Admissions Committee. Mr. Coll appeared *pro se*.

STATEMENT OF FACTS

At first glance, Mr. Coll's Application to the Bar, filed in August 2015, was relatively benign. He appears to have grown up in a "rough" neighborhood in Elyria and, at a young age, became involved in the gang culture. He was charged in 2006 with disorderly conduct for an incident described by Mr. Coll as his "getting revenge" on some people who had assaulted his sister. Mr. Coll was fifteen years old at the time and his application indicates that the misdemeanor charge for disorderly conduct was dismissed. Mr. Coll also incurred a warning for disorderly conduct in 2010 while attending Bowling Green State University.[1] He became belligerent with campus police officers when they refused to tow his automobile that was stuck in a snow drift at the time. Other than these citations, Mr. Coll's background as presented in his application did not raise any significant concerns.[2]

Incomplete Answers on Form 5T

The issues with Mr. Coll began with his response, or lack thereof, to Question 22C of his Bar Application. The question is straight-forward. "Have you been charged with any moving traffic violations that were not alcohol-or-drug-related during the past ten (10) years?" Mr. Coll answered the question in the affirmative. The questionnaire goes on to instruct the applicant to complete Form 5T "for each incident" (emphasis original). In filling out Form 5T, Mr. Coll provided his full name, social security number, and current Ohio driver's license number. Form 5T goes on, however, to instruct the applicant to provide additional specific information for each incident. The information requested, and Mr. Coll's responses, are set forth below.

---

[1] Mr. Coll attended Bowling Green State University where he obtained a B.A. degree in political science in 2012.

[2] Mr. Coll failed to report the citation on his application to the University of Toledo College of Law. According to his Bar Application, he did report it in his applications to attend law school at Cleveland State University and Case Western Reserve University.

☐ Name of law enforcement agency Police
Incident location (city, county, state, province, country) Many Cities, Many Counties, OH
Date of incident (Mo/Yr) 07/2012
Charge(s) on date of incident Speeding
Date of final disposition (Mo/Yr) 09/2012
Charge(s) at time of final disposition Speeding
Final disposition Speeding
Description of incident Racism mostly...

(Hearing Exhibit 2, p.26).

On Thursday afternoon, February 4, 2016, while the Board's Review Committee was sitting, Tarik Jackson (a Bar Admissions Specialist for the Ohio Supreme Court) e-mailed Mr. Coll and informed him that the Board of Commissioners was meeting and reviewing all applicants for final approval to sit for the February 2016 bar examination. He further informed Mr. Coll that the Board "requested that you fill out information for each ticket you may find on separate Form 5Ts." Mr. Jackson further instructed Mr. Coll that the information he had provided on the single Form 5T was "not specific enough" and "could affect [his] ability to sit for the bar exam." (Exhibit 3). At 5:30 p.m. on that Thursday (February 4, 2016), Mr. Coll e-mailed his response to Mr. Jackson, stating "[a]ttached is the form as well as my driver's abstract." The Ohio Bureau of Motor Vehicles abstract that was attached reflected no moving violations.[3] The Form 5T attached to Mr. Coll's email – other than providing perfunctory identification information, such as his name, social security number and drivers' license number – was completely devoid of any substantive information and did not list a single traffic citation or incident. (Hearing Exhibit 4).

On Friday morning, February 5, 2016, Tarik Jackson sent the following e-mail to Mr. Coll:

[3] The Abstract Driver Records only go back three years from the date of the abstract. Question 22C, on the other hand, asks for all citations for the previous ten-year period.

> I will give this to them, however, the problem is that you put on your application that you had traffic violations in 'many cities and counties' in Ohio. . . . You just sent me back a 5T with no information. Are you saying that you do not have traffic violations as you indicated? Because I believe that BMV driving record only goes back 3 years. If you have anything before that time that you can remember, you should fill out a Form 5T for each occasion and send it back to me as soon as possible.

(Hearing Exhibit 3).

Finally, on Friday afternoon of that day, Mr. Coll sent an e-mail stating "attached are the completed 5T forms. I hope this satisfies." (emphasis added). (Hearing Exhibit 5). Attached to the e-mail were two Form 5T's that set out the following.

☐ Name of law enforcement agency Bellefontaine, Ohio
Incident location (city, county, state, province, country) Liberty City
Date of incident (Mo/Yr) July 2012
Country Province
Charge(s) on date of incident
Date of final disposition (Mo/Yr)
Charge(s) at time of final disposition
Final disposition Speeding
Description of incident KKK...their city is worthless

☐ Name of law enforcement agency Fremont, Ohio
Incident location (city, county, state, province, country) Freemont (sic)
Country Province
Date of incident (Mo/Yr) May 2012
Charge(s) on date of incident
Date of final disposition (Mo/Yr)
Charge(s) at time of final disposition
Final disposition Speeding. The Police are the KKK
Description of incident KKK...maybe I was speeding

☐ Name of law enforcement agency Lorain Police
Incident location (city, county, state, province, country) Lorain, OH
Country Province
Date of incident (Mo/Yr) July 2008
Charge(s) on date of incident
Date of final disposition (Mo/Yr)
Charge(s) at time of final disposition
Final disposition Stop sign. The Police are the KKK
Description of incident KKK...they wanted to be me

☐ Name of law enforcement agency Kent State University Police
Incident location (city, county, state, province, country) Kent, OH
Country Province
Date of incident (Mo/Yr) October 2008
Charge(s) on date of incident
Date of final disposition (Mo/Yr)
Charge(s) at time of final disposition
Final disposition Speeding. The Police are the KKK
Description of incident KKK...They hate being them.

As reflected above, Mr. Coll did not provide much of the information requested in the Form 5T. Moreover, the Panel also knows from his testimony and exhibits offered by Mr. Coll at the hearing, that there are other citations that are not listed at all. Hearing Exhibits 1A and 1D reflect two citations that occurred in May and July of 2009, respectively, but neither is described in the Form 5Ts submitted to Tarik Jackson.[4]

The justifications proffered by Mr. Coll for failing to provide the information requested in his application show an incredible degree of poor judgment and an inability to comprehend, or at least comply with, the process set out in Rule I. His first justification is possibly the most alarming. Mr. Coll contends that once he supplied the basic identification information (*i.e.*, his full name, social security number, and Ohio driver's license number), it was up to the Board (as an arm of the Court) to conduct an investigation into his driving background. At the outset of Mr. Coll's case on direct, he made the following statement:

> However, I do see that the Court is more so concerned with me leaving lines blank in the application. You know, many questions were raised to Miss West-Estell about how I didn't provide, you know, the description of – you know, I didn't answer it completely, I didn't answer it fully.
>
> You see, I feel as if I provided enough information for you to conduct an investigation. That – that was my understanding of the application. . . .
>
> * * *
>
> Okay. So completeness of my answer, your concerns. Was my answer complete? You – I'm under the impression that the panel does not believe my answer was complete. I would argue – I would testify today that in every form that I provided to you, I – I made it a point to provide you with my full name – my full name – my Social Security number, my driver's license number. I – I said – if I could say it to you personally, I would say, here you go, you can have it, check it out. There's nothing to hide.

(Tr. at 88:19-24; 89:1-5 and 21-24; 90:1-8.)

[4] Mr. Coll testified repeatedly that if the Panel wanted him to, he could fill out an accurate Form 5T listing all the citations and pertinent information covering the relevant ten-year time period. To date, Mr. Coll has not tendered a completed and accurate Form 5T.

Then, on cross-examination, he provided the testimony set forth below:

Q. So, you're aware that under that rule, the applicant has a duty to provide full and complete information that is requested in the application; do you understand that?

A. I understand that.

Q. Okay. Since you understand that, am I correct then that when the question asks you to provide your – a record – or information on your moving traffic violations other than those involving alcohol or drugs for 10 years, that you have an obligation to provide that information; do you understand that?

A. I understand.

Q. Okay. So it's not an obligation for us to go and find it, it's an obligation for you to provide it. Do you understand that?

A. I – I understand that as an argument that you make, like a counterargument.

Q. No, I'm asking do you understand that under the rule, yes or no?

A. No, not under the rule.

Q. Okay. So you believe that under Rule I – your belief is that under Rule I, you provide your driver's license number and your Social Security number and it is up to the Board – or, I'm sorry, the Supreme Court or some agency of the Supreme Court to do that investigation?

A. I believe so.

(Tr. at 117:3-24; 118:1-7.)

Q. So, what you're saying is when you fill out an application – I want to make sure that you've got this right.

A. Yes.

Q. Or that we've got this right. Because this is really important.

You've studied for three years to become a lawyer. Did you read Rule I?

A. Yes.

Q. Okay. Did you read Rule I more than once?

A. Yes.

Q. Do you read it carefully?

A. Yes.

Q. And it is your understanding, as somebody who wants to become a lawyer in the State of Ohio –

A. Yes.

Q. – that under Rule I, in order to complete your entire obligation when you apply to become a lawyer, you satisfy that obligation entirely when you provide your full name, your address, your Social Security number, and your driver's license number, am I correct?

A. Yes.

(Tr. at 184:14-24; 185:1-14.)

A corollary to Mr. Coll's first justification to the issue of not supplying complete answers to Question 22C is his contention that he had a *contract* with the Board under which the Board was to perform the investigation in exchange for his payment of the application fee (the consideration). Mr. Coll explained his theory in his opening remarks:

> There was also contractual duties between us, between the Board and myself. I paid valuable consideration. In exchange, I was to get an investigation. I don't feel like I received that investigation. My driving record is not part of the record.
>
> * * *
>
> I'm going to argue that the Board breached its duties to investigate me. I paid valuable consideration in exchange for an investigation. It was material that this investigation be concluded before the February 2016 bar, because that's what I applied for, and here we are today, April, we're still going through the process. Therefore, I believe the Board breached – the Board failed because it did not acquire my driving records, thus they never even considered my driving record.

(Tr. at 10:5-10; 15:1-11.)[5]

As to the second justification as to why more information was not provided on the Form 5Ts, Mr. Coll maintained that his previous driving record was of no consequence inasmuch as it was insignificant in measuring his overall character. This was especially so since the BMV's abstract reflected his "rehabilitation" from any past violations.

[5] Applying to the extreme the adage: "the best defense is a good offense," Mr. Coll maintains that "Board's mistake has damaged [him]" and that he is entitled to a refund of his application fee. (Tr. at 9, 11.)

Mr. Coll's conduct, and possibly more importantly, his stated reasons for failing to provide the information in response to Question 22C are clear violations of an applicant's duty to cooperate and to provide accurate and complete answers to all requested information. *See* Gov. Bar Rule I, Section 11, (D)(1) and (D)(3)(g). Mr. Coll willfully and deliberately chose not to answer questions and unilaterally decided which questions were pertinent to the bar application process. The fact that he believes that his only obligation is to supply identification information, and once having done so, it is up to the Court (or the Board of Commissioners on Character and Fitness, as an arm of the Court), to perform and complete an investigation, is evidence of an inability to understand even the simplest of terms of Rule I and the instructions for completing the application. It also reflects a degree of arrogance and disdainfulness for the Court that brings into serious question the applicant's maturity and judgment.[6]

Comments on Form 5T About Racism, KKK and His Rational For Such Answers

Mr. Coll's failure to provide information on his Form 5Ts accounts for only part of the Panel's unease with his application. His references to racism and the police being the KKK certainly raises a red flag. But his testimony as to why he made such references, and what it discloses about his character and fitness, is the most disconcerting aspect of the case.

Mr. Coll called as a character witness Ms. West-Estell, an Assistant Prosecutor with the City of Toledo. Mr. Coll worked as an intern in the prosecutor's office from August to December in 2015. On questioning from the Panel as to whether Mr. Coll had told her why he had made the references to racism and the police being the KKK on his Bar Application, she answered that Mr. Coll had conceded "he shouldn't have answered that question like that."

[6] Even supposing Mr. Coll does not truly believe the underlying premise for his defense (i.e., he had a contract with the court and it was the Court's duty to investigate), the fact that he would set forth such an argument makes the Panel wonder whether he is ready to represent clients in a professional manner.

And as to why he shouldn't have answered like that – she testified that "*he indicated to me that he didn't really believe that.*" (Emphasis added.) (Tr. at 74:7-13.) As to why the applicant would make such a remark on his submission to take the bar examination, she simply suggested that the Panel would have to ask Mr. Coll that question. (Tr. at 74:7-18.) During his testimony and his closing statement, Mr. Coll provided insights to the answer of that question.

> Q. So after three years of law school, when you saw this "description of incident" on form 5T, you thought racism was a description of the incident?
>
> A. No, I thought it was a great opportunity to tell the State of Ohio how I want to freely express myself.

(Tr. at 131:2-8.)

> Q. Okay. Under the description of the incident, would you read that for me
>
> A. KKK. They hate being them.
>
> Q. And "they" being the Kent State – I'm sorry – yeah, the –
>
> A. It's just speech. I wasn't referring to anybody in specific, I was just making it a point that I can say whatever I want to the State of Ohio.

(Emphasis added.) (Tr. at 149:1-9.)

> Q. Can I ask you, why didn't you give the information requested?
>
> A. I just – I didn't feel like I had to. *I wanted to – to flex my rights.*
>
> Q. Okay. All right. Let's stop right there. Very simply, I asked you why you didn't give the information, and you said because you wanted to flex your rights. Is that why we see the information you provided in 5T?
>
> A. Yes.
>
> Q. Okay. Because you were trying to flex your rights?
>
> A. I'm studying for the bar, I'm studying First Amendment, you know, and I say, hey, this is allowed. *I'm going to get away with this.*

(Emphasis added.) (Tr. at 189:13-24; 190:1-3.)

> MR. FAIRWEATHER: But [Ms. West-Estell] said that she didn't recognize the Mr. Coll that did that. She was talking about you in glowing terms, and then when we were asking her questions and describing what you

had done on your application and describing what you said and the actions you took, she said, that's not the Mr. Coll I know.

How do you reconcile those two?

MR. COLL: Mr. Fairweather, I – you know, I would – I would say that she – you know, that her opinion about me stayed consistent throughout her testimony. I'm an attorney and *I wanted this case*. I didn't – I didn't mean to offend any of you personally. I didn't mean to take up any of your time, to waste your time. That was not my intention.

MR FAIRWEATHER: What did you mean you wanted this case?

MR. COLL: Hmm?

MR. FAIRWEATHER: What did you mean when you said you wanted this case?

MR. COLL: *I thought it would be interesting. I thought it would be worth it. I said, I can take do this. I can do this. I can take this opportunity today and – and write this on my application. I said, that's something you can do, Shamir, and you're legally entitled to do it and you can do it and you'll still get final approval to sit for the bar. That's – that was my mentality then. That's my mentality now.*

MR. FAIRWEATHER: Let me make sure I understand this right. When you filled out your application you did it with the full understanding that you might be in front of the panel as you are today and you would find the case interesting?

MR. COLL: No, I felt as if you were just going to skip over it like – I felt as if the panel was – was going to investigate my driving record and see, hey, we don't have anything to worry about, it's fine. *We don't like it. We disagree. It's – I hate what he said. That's what I felt the panel was going to say. That's why I requested the transcript of that February 5th meeting. We hate what he says.* But, hey, look at his driving record, he's rehabilitated, nothing but minor offenses, let him take the exam.

MR. FAIRWEATHER: So you said it for the purpose of getting that kind of reaction from the panel?

MR. COLL: Maybe so.

MR. FAIRWEATHER: She can't take a nod of the head.

MR. COLL: Maybe so. . . . I did this with the intention to flex my legal rights under the First Amendment of the Federal, the Seventh of Ohio. I did it to flex my contractual rights with the Board. I did it –

MR. FAIRWEATHER: You did what?

MR. COLL: I wrote those statements. I answered question 22 the way that I answered it as an expression of myself as an individual. *I'm giving you full and complete candor on who I am and who I will be as an attorney.*

(Emphasis added.) (Tr. 199:14-24; 200:1-24; 201:1-21; 202:5-19.)

Information Since The Hearing on April 28, 2016

Since the panel hearing on April 28, 2016, Mr. Coll updated his bar application via the on-line Bar Admission Service. He apprised Bar Admission that he had been charged, and found guilty by a jury on June 7, 2016, of two misdemeanor charges in the fourth degree (undersize fishing and fishing in a closed zone). He was fined $100 for each charge, and was assessed costs of $639. A ten day jail sentence was suspended and he was placed on "two years N/R probation." Mr. Coll, who represented himself at trial in Freemont Municipal Court, has filed a notice of appeal to the 6th District Court of Appeals. Granted the fishing charges are not serious; but what the Panel finds troubling is the fact that charges were pending as of March 28, 2016, prior to Mr. Coll's hearing at the end of April. At no time during the hearing did Mr. Coll apprise the Panel of his misdemeanor charges. Question 21A clearly calls for this information to be provided ("[h]ave you ever been cited, arrested, charged or convicted for any violation of any law including as a juvenile...?"). Moreover, Rule I mandates a continuing duty to update the application. This latter turn of events simply confirms Mr. Coll's pattern of not being forthcoming. It does not speak well of his character and fitness.

DISCUSSION

This is, among other things, a "failure to cooperate" case. It is undisputed that Mr. Coll failed to provide information regarding his driving records. This is so even though Tarik Jackson of the Bar Admissions Office brought the deficiency in his application to Mr. Coll's attention and implored him to be more forthcoming – and explained the risk to Mr. Coll of his application being denied should the information not be provided. Moreover, Mr. Coll testified that he could have submitted a Form 5T containing all of the information. The materiality of the missing information

is not a mitigating factor.[7] Applicants cannot be the arbiters of what information is pertinent and what is not. Nor can applicants to the bar – after having studied the law for three years – credibly argue that Rule I mandates that the applicant provide only the most rudimentary information, while requiring the Bar Admissions Office or the Board to ferret out the particulars listed on Form 5T. Mr. Coll is either being dishonest under oath (which is, in itself, disqualifying), or he is unwittingly admitting that he lacks the intellectual aptitude to be a lawyer. Either way, he has failed to meet his burden, by clear and convincing evidence, that he possesses the requisite character, fitness and moral qualifications for admission to the practice of law.

But the disapproval of his application is required on yet another basis. Mr. Coll purposefully chose the bar application process to make provocative statements (some may characterize them as inflammatory) – *that he did not even believe were true* – simply for the purpose of "flexing his rights." So enamored was Mr. Coll with his study of constitutional law, that he set out to sabotage the application process with his Question 22C response – hoping that a panel would conclude that they "hate[d] what he [said]" – but be forced to approve his application. Mr. Coll readily admitted that "[he] wanted this case," that "it would be interesting" to see what he could "get away with." There is no place in the practice of law for such gamesmanship.

Not only do his constitutional arguments lack rigor, his facile exercise – at the expense of the Bar Admissions Committee and the Board of Commissioners – demonstrates a woefully inadequate appreciation for the seriousness of the legal profession and the bar admissions process, so much so that the Panel concludes that his immaturity (or egotism . . . or both),

[7] The Panel still does not know the particulars of the Applicant's past driving record going back more than three years.

combined with a dramatic lack of judgment, render him currently unfit to practice law.[8] His testimony does not permit the Panel to conclude that his conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them.[9]

RECOMMENDATION

Mr. Coll has failed to prove that he possesses the requisite character, fitness, and moral qualifications for admission to the practice of law in Ohio. The Panel recommends that his application to register as a candidate for admission to the practice of law be disapproved, and that he not be permitted to re-apply until the deadline established to take the July 2019 bar examination.

John C. Fairweather, Chairperson

Suzanne K. Richards

Judge Denise L. Moody

[967030]

[8] During the hearing, Mr. Coll – in response to a question that he might be wrong – literally contended: "No, no, of course not. Never wrong." (Tr. at 160:18.)

[9] Mr. Coll testified that he might advise a client to fill out his bar application as he did if the client wanted to express themselves freely to the State of Ohio. (Tr. 169:15-21.).

EXHIBIT
tabbies
6

ORIGINAL

The Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS

ON CHARACTER AND FITNESS OF

THE SUPREME COURT OF OHIO

In re: Application of
Shamir Lee Coll

Case No. 643 16-1243

FINDINGS OF FACT AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON CHARACTER AND FITNESS OF THE SUPREME COURT OF OHIO

This matter is before the board pursuant to its *sua sponte* investigatory authority. Gov. Bar R. I, Sec. 10(B)(2)(e).

A duly appointed panel of three Commissioners on Character and Fitness was impaneled for the purpose of hearing testimony and receiving evidence in this matter. The panel filed its report with the board on July 7, 2016.

Pursuant to Gov. Bar R. I, Sec. 12(D), the board considered this matter on July 8, 2016. By unanimous vote, the board adopts the panel report as attached, including its findings of fact and recommendation of disapproval.

Therefore, the Board of Commissioners on Character and Fitness recommends that the applicant be disapproved; that he be permitted to apply for the July 2019 bar examination by filing a new Application to Register as a Candidate for Admission to the Practice of Law and an Application to Take the Bar Examination; and that upon reapplication, he undergo a complete character and fitness investigation, including an investigation and report by the National Conference of Bar Examiners, in order to determine whether he possesses the requisite character, fitness, and moral qualifications for admission to the practice of law in Ohio.

FILED
AUG 18 2016
CLERK OF COURT
SUPREME COURT OF OHIO

TC Hicks

TODD HICKS, Chair, Board of Commissioners on Character and Fitness for the Supreme Court of Ohio

Jonathan E. Coughlan, Esq.
Direct Dial: (614) 462-5455
Facsimile: (614) 464-2634
E-mail: jcoughlan@keglerbrown.com

October 17, 2016

VIA EMAIL and REGULAR U.S. MAIL

David Pepper
Ohio Democratic Party
340 Fulton St.
Columbus, Ohio 43215

RE: Opinion letter regarding judicial disqualification

Dear Mr. Pepper:

You have asked me to evaluate whether a judicial officer should recuse him or herself under the following circumstances: The judicial officer serves as an associate justice on the Supreme Court of Ohio and at the same time the justice's father serves as the Attorney General for the State of Ohio.

Qualifications

I was first licensed to practice law in Ohio in November of 1978. Since then I have practiced as a public defender, a prosecutor and in private practice in three different states: Ohio, New Hampshire, and New York. I continue to be registered as an active member of the bar in Ohio and in New York. I have been involved in matters concerning attorney ethics, attorney misconduct, judicial ethics, judicial misconduct and the unauthorized practice of law for over 18 years. From 1997 until 2013, I served as the Disciplinary Counsel of the Supreme Court of Ohio. In that role, I both prosecuted and supervised the prosecution of numerous cases of attorney misconduct and judicial misconduct as well as cases involving the unauthorized practice of law in Ohio. My experience includes presenting attorney discipline cases, judicial discipline cases and unauthorized practice of law cases to the requisite tribunals and arguing those cases before the Supreme Court of Ohio.

During my tenure as Disciplinary Counsel, I served on three separate Task Forces: the Supreme Court Task Force on the Ohio Rules of Professional Conduct (2003-2006); the Supreme Court Task Force on the Ohio Judicial Canons (2007-2009); and the Supreme Court Task Force to Review the Ohio Disciplinary Process (2009-2010). The Task Force on the Ohio Rules of Professional Conduct was responsible for the proposed revision to the Ohio disciplinary rules, which were adopted by the Supreme Court in 2007. The Task Force on the Ohio Judicial Canons was responsible for the proposed revision to the Ohio Judicial Canons, which were adopted by the Supreme Court in 2009.

I belonged to the Association of Judicial Disciplinary Counsel a national organization of judicial disciplinary authorities. I was a member of AJDC for 13 years, a board member for 6 years and president for 2 years. I was a member of the National Organization of Bar Counsel for 16 years. I am a member of the Association of Professional Responsibility Lawyers. Since 2005, I have also served as an adjunct professor teaching professional responsibility at the Moritz College of Law at the Ohio State University.

My present practice focuses on the representation of Ohio lawyers and judges in matters of professional responsibility as well as providing expert services concerning professional responsibility issues. My hourly rate for this engagement is $250.

Materials Reviewed

In addition to the assumed facts listed below, I have also reviewed the Ohio Code of Judicial Conduct, the ABA Annotated Model Code of Judicial Conduct, the Judicial Conduct Reporter as well as authorities cited or referenced in this opinion.

Assumed Facts

1. The judge in question is sitting as an associate justice on the Ohio Supreme Court;
2. The justice's father is concurrently serving as the elected Attorney General of the State of Ohio;
3. The Attorney General's Office represents entities in matters before the Supreme Court of Ohio;
4. The Attorney General's Office will, on occasion, be a party to litigation before the Supreme Court of Ohio; and,
5. The Attorney General's Office will, on occasion, prepare and file an Amicus brief in matters pending before the Supreme Court of Ohio.

Analysis

Ohio Jud. Cond. R. 2.11 sets forth the circumstances when an Ohio judge must disqualify themselves. As applicable here, Ohio Jud. Cond. R. 2.11 states:

> (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:
> (2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is any of the following:

(a) A party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
(b) Acting as a lawyer in the proceeding;

The rule is unambiguous that whenever a party to a proceeding before a judge is within the third degree of relationship to the judge, the judge must recuse. Here, the Attorney General is the justice's father and as such fits within the definition of one within a third degree relationship.[1] Accordingly, it is my expert opinion that in any matter where the Attorney General is a party, the justice must disqualify himself. I hold this opinion to a reasonable degree of legal certainty.

The second fact pattern involves applying the rule to the situation where the Attorney General's office is representing a party before the Supreme Court of Ohio. In this situation, the Attorney General's office will likely be represented by an Assistant Attorney General not the Attorney General himself. Nonetheless, the attorney general is normally identified as counsel for the party on every single pleading filed with the Supreme Court of Ohio. This identification of the Attorney General as counsel occurs on the first page of the pleading and again after the prayer for relief.

The issue is whether this creates a situation where the justice must disqualify himself because a member of his father's office is counsel of record for a party before the Supreme Court of Ohio. Jud. Cond. R. 2.11 does not require a showing that the justice is in fact impartial. Rather, the inquiry is whether under the circumstances, the justice's "impartiality might reasonably be questioned." Thus, the analysis looks to an objective determination of whether under the circumstances there is an appearance that the justice's impartiality might reasonably be subject to question.

Jud. Cond. R. 2.11 comment 4 indicates that simply having a lawyer from a law firm where the justice's relative works may not be a disqualifying circumstance. This would be particularly true where the related lawyer is an associate, had no involvement with the matter at hand and did not stand to benefit financially from a decision in the matter. That, however, is not the circumstance here.

In this fact pattern, as distinguished from an associate at a private law firm, the lawyer in question is the government attorney who presides over all the lawyers in the office. In other jurisdictions, a judge having a relative functioning as the supervisor of other lawyers who appear before a judicial officer has been determined to necessitate disqualification. The District of

[1] The Ohio Judicial Canons define "third degree of relationship" as including the following persons: great grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew and niece.

Columbia Advisory Committee on Judicial Conduct addressed such a situation in Advisory Opinion No. 9 (2001). In that opinion, the committee was asked by a Superior Court Judge whether she should disqualify herself from cases brought by the Office of the Chief Legal Counsel for the District (Corporation Counsel) when her husband served as the Chief Counsel. The committee noted that there was a large number of staff attorneys employed by the Corporation Counsel, but that all the attorneys operated under the direction and control of the Corporation Counsel. And those attorneys not only served under him, but they worked on cases for which the Corporation Counsel was ultimately responsible.

As the DC committee noted, the outcome of those cases impacted not only the individual attorneys working on them, but also impacted the reputation and potentially the future career of the Corporation Counsel. Further, while the staff assistants may be listed as counsel of record, the DC committee observed that the Corporation Counsel's name appears on all filings and, as Corporation Counsel, the judge's husband had ultimate responsibility for the direction and control of the staff assistants appearing before the judge. Accordingly, the advisory opinion did not find the number of assistants or the layers of supervisory personnel a distinguishing factor.

In the Federal system, the judiciary is guided by the "Guide to Judiciary Policy." That policy includes a series of advisory opinions on various ethical issues for judges. Advisory Opinion No. 38, discusses the obligation to recuse if a federal judge is related to an attorney acting as a lawyer in a proceeding before the judge. The opinion first notes that service as an Assistant US Attorney is distinguishable from service as an attorney in a private law firm. This is because:

> The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.

Berger, v. United States, 295 U.S. 78, 88 (1934).

Opinion No. 38 addressed the situation of a judge presiding over a case where the lawyer for the government worked in an office where the judge's relative was the United States Attorney or the Acting United States Attorney. The opinion is clear: "If the relative serves as either the United States Attorney or Acting United States Attorney, the judge should recuse in all cases in which the office appears."

In New York Advisory Opinion 10-5 (2010), the New York committee reached the same conclusion with regard to a judge whose spouse was the County Attorney. There, the committee required the judge to recuse him/herself in all cases involving the County Attorney's office. The recusal was necessary because the judge's relative, as the County Attorney, was involved either directly or indirectly in all cases which the County Attorney appears.

And finally, in Advisory Opinion 08-1 (2009), the Maine Judicial Ethics Committee addressed the situation of a judge presiding over cases in which the Maine Attorney General's office appeared and the judge's wife's sister was the Attorney General. The opinion acknowledges that while it is rare that the Attorney General would appear personally, there are many cases where the Attorney General is involved in decisions relating to cases and that it is to expected that the Attorney General would ordinarily direct or approve major decisions made by his or her staff. Even in routine cases where the Attorney General might not have an involvement, unanticipated events could easily lead to the Attorney General's involvement. As a result, the committee expressed the view that "the Attorney General is acting a lawyer in all cases where the Attorney General is personally involved in directing or approving decisions by her staff." And in those situations, recusal is required.[2]

In the assumed facts here, the justice's relative is the elected Attorney General for the State of Ohio. As such, he has ultimate responsibility for all the legal matters handled by his office and he has ultimate responsibility for all the attorneys working for him. In fact, according the Revised Code, the Attorney General "shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested." R.C. 109.02. And the Attorney General can be called upon by either the Governor or the General Assembly to appear for the state in any court in a matter where the state is a party or has an interest. In each occasion, the Attorney General, whether personally appearing or not, is answerable for the actions of his office.

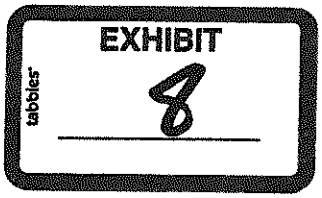
Because of the supervisory nature of the Attorney General over all the attorneys in his office, the likelihood that the Attorney General would be at least aware of if not directly involved with cases before the Supreme Court of Ohio, the accountability of the Attorney General for the actions of his staff, and his ultimate responsibility for all the cases handled by his staff, it is my expert opinion that under Jud. Cond. R. 2.11, the justice in the assumed facts would be required to recuse from all cases where a member of the Attorney General's office was appearing as

[2] The relevant Code provisions in New York, the District of Columbia, Maine as well as the Federal Code of Judicial Conduct are virtually identical to Ohio Jud. Cond. R. 2.11 (A) (2) (b).

counsel or was filing an Amicus brief. I hold this opinion to a reasonable degree of legal certainty. I reserve the right to supplement my opinions upon receipt of additional information.

Sincerely yours,

Jonathan E. Coughlan



isaac wiles
Isaac Wiles Burkholder & Teetor, LLC

Michael Close
In the Columbus Office
614-340-7409
mclose@isaacwiles.com

October 25, 2016

Hon. Richard P. DeWine
First District Court of Appeals
230 East Ninth Street
Cincinnati, OH 45202

Re: Response to opinion letter regarding judicial disqualification

Dear Judge DeWine:

You previously asked for an opinion regarding whether there is an ethical conflict with a judge presiding over cases in which the Attorney General, who is a relative of the judge, or in which an Assistant Attorney General, who works in the office of a relative of the judge, appears before the judge in a case.

In my opinion letter dated June 14, 2016 I opined that you would need to disqualify yourself only in cases where Attorney General Mike DeWine, your father, is directly representing a party by appearing before you in any proceeding in the matter. This remains my opinion.

It also remains my opinion that you will not have an ethical conflict and will not have to disqualify yourself in a case where anyone else at the Attorney General's Office is directly representing a party in a case before you.

Qualifications

My opinion is based on more than 40 years' legal experience. I have been a member in good standing with the Ohio Bar since 1975. I have been involved in matters of attorney standards of care and professional ethics for approximately 32 years. Since the early 80's I have more or less continuously been a member of the Certified Grievance Committee of the Columbus Bar Association. In that capacity I have participated in deliberations, decisions and argued cases before the Board of Commissioners on Grievance and Discipline and the Ohio Supreme Court. I terminated my membership to the Committee in July of 2013 after completing two years as Vice Chair and two years as Chair of that Committee. Over the years I have represented literally hundreds of judges and lawyers throughout the state of Ohio. In addition to the successful prosecution of cases against lawyers, I have been involved in many, many, many defenses. A list of my relevant professional experience follows:

Professional Ethics Committee Columbus Bar Association Member Committee	1996-2004
Liaison for the Board of Governors to the Ethics Committee	1992-1996
Appellate Judge, State of Ohio	1993-1998
State of Ohio, Common Pleas Judge (Presiding Judge 1991-1992)	1989-1993
Member of the Ethics Committee	1986-1992

In addition to investigating and prosecuting cases for the Professional Ethics Committee of the Columbus Bar Association, I have defended numerous judges and lawyers in ethics prosecution and provided preventative ethics advice.

It has come to my attention that attorney Jonathan Coughlan prepared an opinion letter to David Pepper of the Ohio Democratic Party regarding judicial disqualification. Mr. Coughlan agreed with my opinion that a judge would need to disqualify himself from cases in which the Attorney General, who is a relative of the judge, appears before the judge. However, Mr. Coughlan opines that such a judge would need to disqualify himself from all cases where a member of the Attorney General's office was appearing as counsel or filing an Amicus Brief. Mr. Coughlan does not provide any support under Ohio law for his opinion.

Legal Analysis

Ohio Jud. Cond. R. 2.11 controls the circumstances in which Ohio judges must disqualify themselves. A judge must disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. Ohio Jud. Cond. R. 2.11(A). A judge should step aside if a reasonable observer "would harbor serious doubts about the judge's impartiality." *In re Disqualification of Lynch*, 135 Ohio St.3d 1208, 2012-Ohio-6305, 985 N.E.2d 491, ¶ 8. Ohio Jud. Cond. R. 2.11 Comment 4 explains that "[t]he fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge." Only where the judge's impartiality might reasonably be questioned should the judge be disqualified. Here, your impartiality is not reasonably questioned in cases where an Assistant Attorney General, who is one of the hundreds of personnel employed by the Office of the Attorney General, and not the Attorney General himself, appears before you.

In fact, on November 24, 2014, Chief Justice Maureen O'Connor assigned you to preside in the Seventh District Court of Appeals to hear case 14-MA-73, *In re: Grand Jury Proceedings State of Ohio v. John Doe*, and to conclude any proceedings in which you participated. A copy of the Certificate of Assignment is enclosed. As a result of the assignment, you served as a judge in a case in which an Assistant Attorney General participated. Attorney General Mike DeWine did not directly represent a party in the action. You were not required to disqualify yourself in the case because no conflict arose. Our Chief Justice could not have assigned you to the case if there was a conflict.

Ohio courts and the Board of Professional Conduct have not addressed the specific issue presented by these facts but other jurisdictions have issued decisions on analogous conflicts, which were summarized and explained in my opinion letter dated June 14, 2016. The relevant authority all lead to the same conclusion: a judge need not disqualify himself from cases where a party is represented by assistant attorneys general.

New York's Section 100.3(A)(1) of the Rules Governing Judicial Conduct is virtually identical to the Ohio Jud. Cond. R. 2.11(A).[1] Section 100.3(A)(1) requires a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Opinion 98-14 from the New York judicial ethics code concluded a judge did not need to disqualify himself as a result of previous representation by the Attorney General's office in matters in which the appearance in court is by a member of the Attorney General's staff. In reaching its opinion, it noted that representation by the office of the Attorney General is not to be analogized to that of representation of a judge in a personal matter by a law firm, where disqualification might be required whenever any member of the firm appears. "[I]t cannot be said that there is a unity of interest among Assistant Attorneys General throughout the state so as to require disqualification."

The Wisconsin Supreme Court has noted that "special characteristics of government attorneys make it unlikely that a judge's relationship with one would affect his or her impartiality." *State v. Harrell*, 199 Wis.2d 654, 546 N.W.2d 115, 118 (1996). Wisconsin statutes governing disqualifications of judges do not require a judge to disqualify himself in a case tried by the district attorney's office when his spouse is an assistant district attorney. A judge is not required to disqualify himself as long as his spouse "did not participate in, or help prepare, the case." *Id.* at 657. The Wisconsin Supreme Court rejected the argument that specific language in the Wisconsin statute requiring disqualification when "a judge is related to any party or counsel thereto... within the 3rd degree of kinship" extended to all members of the government office trying the case. *Id.* at 659. The court noted the language "certainly does not include every government attorney who happens to be employed in the same county office or governmental department." *Id.* at 659-660.

Citing to the *Harrell* opinion, the Minnesota Court of Appeals in *In re Jacobs*, 791 N.W.2d 300 (Minn. Ct. App. 2010), aff'd, 802 N.W.2d 748 (Minn. 2011) held that a judge did not have to disqualify himself in a case where his wife's office was prosecuting the case. 791 N.W.2d at 302. So long as the wife was not "personally involved in a case," the judge was not required to disqualify himself. *Id.*

Advisory Opinion 08-1 (2009) of the Maine Judicial Ethics Committee, cited by Mr. Coughlan, in fact supports our conclusion. The Maine Judicial Ethics Committee explained that "[i]t is rare that an Attorney General will personally appear as counsel in a case where the State is represented by the Attorney General's office." It further noted that there are some cases where the Attorney General is personally involved in legal decisions, like for "major decisions made by his or her staff in important cases." Other cases are handled by members of the office without any direct involvement of the Attorney General, but noting that there is always the possibility that an unexpected development may involve the Attorney General. It is the Committee's view

[1] Mr. Coughlan's Opinion Letter in fn. 2 agrees.

that the Attorney General appears as an attorney in cases "where the Attorney General is *personally* involved in directing or approving decisions by [his or] staff." (emphasis added). The Committee further offered that the Maine Attorney General could obviate any issue as to judicial disqualification by removing herself from the participation and decision-making of a specified case.

Distinguishable and irrelevant to the present matter is the recent United States Supreme Court case *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1903, 195 L. Ed. 2d 132 (2016). *Williams* involved a Pennsylvania Supreme Court justice, who as a district attorney had given approval to seek the death penalty against an inmate. The Court held the justice should have recused himself and not participated in the decision to reinstate the death sentence against the inmate. *Williams* is distinguishable for two reasons.

First, the Pennsylvania Supreme Court justice's work as a district attorney created the conflict by approving the prosecutor's request to seek the death penalty. So the justice in *Williams* was formerly a district attorney in the underlying case; the justice wore two hats, one as accuser and one as adjudicator. Here, the issue is whether the entire office of Attorney General Mike DeWine, your father, creates a conflict when anyone else besides your father represents a party in a case before you. You have never worked as an Assistant Attorney General; you have never worked in the Attorney General's office; therefore, you are unlike the justice in *Williams* because you never were in a position to serve as "accuser and adjudicator" in a case. *See Williams, supra* at 1901.

Second, the Pennsylvania Supreme Court justice in *Williams* "had significant, personal involvement as a prosecutor in a critical decision regarding the [inmate's] case." *Id.* Without the justice's express authorization while a district attorney, the State would not have been able to pursue the death penalty against the inmate. The decisions and involvement of the justice while serving as a district attorney, impacted the case of the inmate. Here, we have no such involvement. As discussed above, you would need to disqualify yourself from any case in which your father Attorney General Mike DeWine directly represented a party appearing before you. However, you are not required to disqualify yourself where someone else from the Attorney General's office appears in a case before you.

Based on a review of the facts and legal authority, only when Attorney General Mike DeWine is personally involved in a case is your disqualification necessary.

It is my opinion that under Ohio Jud. Cond. R. 2.11, you will not have an ethical conflict and will not have to disqualify yourself in a case where someone other than Mike DeWine at the Attorney General's office is directly representing a party in a case before you.

If you have any further questions, please let us know.

Sincerely,

Michael Close

3608918.2 : 07202 00069

March 8, 2017

Complaint v.

Justice R. Patrick DeWine

(Judge Supreme Court of Ohio)

This is a complaint against Supreme Court of Ohio Justice R. Patrick DeWine based on the Model Rules of Judicial Conduct.

The Model Rules of Judicial Conduct CANON 1 states that:

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2: Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.3: Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests* of the judge or others, or allow others to do so.

Arguments

1. *Justice R. Patrick DeWine creates the appearance of impartiality and impropriety when refusing to ask questions to the Ohio Attorney General's Office on oral arguments before the Supreme Court of Ohio. Rule 1.2.*

Justice R. Patrick DeWine is the son of Ohio Attorney General Michael DeWine. The Ohio Attorney General's office regularly argues cases before the Supreme Court of Ohio.

These cases are examples of how Justice R. Patrick DeWine intentionally refuses to ask questions to the Ohio Attorney General's Office while challenging the other party's position on oral arguments:

a. State of Ohio et al. v. Shannon Ferguson, Case No. 2015-1975 Eighth District Court of Appeals (Cuyahoga County)

b. State of Ohio v. Sherry Bembry and Harsimran Singh, Case No. 2016-0238 Seventh District Court of Appeals (Mahoning County)

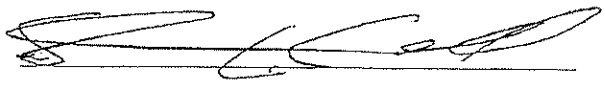
2. *Justice R. Patrick DeWine abuses the prestige of the Judicial Office to advance the personal or economic interests of the judge or others when hearing cases argued by Ohio Attorney General's Office Michael DeWine. Rule 1.3*

Justice R. Patrick DeWine is the son of Ohio Attorney General Michael DeWine. The Ohio Attorney General's office regularly argues cases before the Supreme Court of Ohio.

When Supreme Court of Ohio Justice R. Patrick DeWine votes in favor of the State, on any case argued by the Ohio Attorney General's Office, Justice DeWine is voting (in-part or in-whole) in favor of his father's reputation as Ohio Attorney General. Therefore, Justice R. Patrick DeWine violates Rule 1.3 of the Model Rules of Judicial Conduct.

Conclusion

1. Justice R. Patrick DeWine should recuse himself from hearing any case argued by Ohio Attorney General's Office Michael DeWine.
2. Justice R. Patrick DeWine should resign from his position as Justice in the Ohio Supreme Court if he refuses to recuse himself from hearing cases argued by Ohio Attorney General's Office Michael DeWine.



Shamir L. Coll, J.D.

923 W. 18th St.

Lorain, OH 44052

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EXHIBIT
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10

STEPHEN P. HANUDEL
Attorney at Law

124 Middle Avenue, Suite 900
Elyria, Ohio 44035
Phone: 440.328.8973
Fax: 440.261.4040
Email: sph812@gmail.com

March 30, 2017

FILED
APR 03 2017
CLERK OF COURT
SUPREME COURT OF OHIO

Sandra Grosko
Clerk of Ohio Supreme Court
65 South Front Street, 8th Floor
Columbus, Ohio 43215-3431

RE: *Johnson v. Sloan*, Ohio Supreme Court Case No. 2016-1284

Dear Ms. Grosko:

On behalf of Robert L. Johnson, I hereby request the recusal of Justice Patrick DeWine pursuant to S. Ct. Prac. R. 4.04(B). The reason is that Justice DeWine's father, Michael DeWine is the Ohio Attorney General, who represents Warden Brigham Sloan, the opposing party to Mr. Johnson in the above referenced case.

Even though Attorney General DeWine has not signed any pleadings in Mr. Johnson's case, he is listed as the first attorney of record for Warden Sloan. Principal Assistant Attorney General Stephanie Watson, who has signed the pleadings on the case, works for Attorney General DeWine. He is her ultimate boss. He has the authority to supervise, review, and approve Ms. Watson's strategy, decision-making, and quality of work.

If Ms. Watson's performance on Mr. Johnson's case does not satisfy Attorney General DeWine some reason, she could lose her employment. So even though I have not personally had any interactions with Attorney General DeWine and that all my communications with the Attorney General's office on the case have been with Ms. Watson, her actions on the case ultimately have to meet Attorney General DeWine's approval.

I am not privy to how the Ohio Attorney General's office operates in its hierarchical structure. I am not privy to Attorney General DeWine's management style, whether he micromanages or lets his employees make their own independent decisions. I am not privy to whether Attorney General DeWine has had any personal involvement in Mr. Johnson's case by way of supervision, review, and/or approval. There is no way to know for sure without combing through records in the Attorney General's office. Beyond

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SUPREME COURT OF OHIO

the records, there is no way to objectively know whether Attorney General DeWine had any discussion about the case that would not necessarily be documented.

Further, the Attorney General is the head prosecutor for the State of Ohio. Even though Warden Sloan is the named party, it is in name only because of the nature of a habeas corpus proceeding. In substance, the action is against the State of Ohio since it is against Warden Sloan in his capacity as a state actor. It is highly unlikely that Warden Sloan is driving any of the decision-making that a client normally would do with an attorney. Thus, the Attorney General's office is most likely the sole decision-maker in the case. This means that Attorney General DeWine has the most influence over the litigation decision-making in opposition to my client.

Ultimately, what matters most is that the mere appearance of impropriety, even if there is no evidence of actual impropriety, mandates the recusal of a judge.

Because Justice DeWine's father is the attorney for my client's opposing litigant, and has the most authority and influence over the litigation decision-making in opposition to my client, there is an appearance of impropriety that necessitates Justice DeWine's recusal.

Therefore, on Mr. Johnson's behalf and pursuant to the attached affidavit, I hereby request the recusal of Justice DeWine and for a visiting justice to sit in his place not only in this case, but for any matters in which Mr. Johnson when is in opposition to the State of Ohio.

Sincerely,

Stephen P. Hahudel
Attorney for Robert L. Johnson

CC: Stephanie Watson, Principal Assistant Attorney General

STATE OF OHIO)
) ss: AFFIDAVIT
COUNTY OF LORAIN)

Stephen P. Hanudel, being first duly cautioned and sworn, deposes and states the following:

1. I am the attorney for Robert L. Johnson in his exoneration efforts, including *Johnson v. Sloan*, Ohio Supreme Court Case No. 2016-1284.

2. To my best belief and knowledge, Ohio Supreme Court Justice Patrick DeWine is the son of Ohio Attorney General Michael DeWine.

3. The Ohio Attorney General is the opposing counsel in *Johnson v. Sloan*. Attorney General DeWine is listed as an attorney of record and his name appears on all pleadings.

4. I have not had any personal contact with Attorney General DeWine about the case. Instead, all my communications with the Ohio Attorney General's office about the case have been with Principal Assistant Attorney General Stephanie Watson. She has signed her name to all pleadings from the Ohio Attorney General's office, but under the name of Attorney General DeWine.

5. My letter dated March 30, 2017 to Sandra Grosko, Clerk of the Ohio Supreme Court, is true and accurate to my best belief and knowledge.

Further, affiant sayeth naught.

Stephen P. Hanudel

Sworn and subscribed before me, a Notary Public in and for said County in said State, on this 30th day of March 2017.

Michael J. Kinlin
Attorney-at-Law / Notary Public
My Commission Has No Expiration Date

Notary Public

ORIGINAL

The Supreme Court of Ohio

April 4, 2017

Ms. Sandra Grosko
Clerk of Court
Supreme Court of Ohio
65 South Front Street/8th Floor
Columbus, OH 43215

Re: *Robert L. Johnson v. Brigham Sloan, Warden*, 2016-1284

Dear Ms. Grosko:

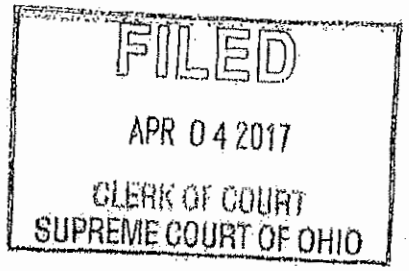
On April 3, 2017, appellant, Robert Johnson, filed a request seeking my recusal from *Robert L. Johnson v. Brigham Sloan, Warden,* 2016-1284. I have reviewed the request and accompanying affidavit. Finding the request without merit, I will continue to participate in the case.

Very truly yours,

Pat DeWine

R. Patrick DeWine

RPD/rph



From: Pat DeWine
Date: April 23, 2017 at 7:52:58 PM EDT
To: Joe Deters

Joe,

Can you find a spot in your internship program for my son, Matt this summer.

I've attached his resume. He is a freshman at Miami.

It would be a great experience for him. If you can, I would really appreciate it.

Thanks,

Pat

From: JT Deters
Sent: Sunday, April 23, 2017 8:38 PM
To: Janet Roedel
Subject: Fwd:
Attachments: DeWine resume.docx; ATT00958.htm

Another...for sure

Neither Deters nor his spokeswoman Julie Wilson would take questions about the internships. DeWine did not respond to an email sent to him through an Ohio Supreme Court spokesman. Triantafilou and Gerhardt did not respond to emailed requests for comment.

Tim Burke, chairman of the Hamilton County Democratic Party, expressed alarm at the temporary hirings.

"I've got no problem with an internship program, but if it is only open to folks who are well connected to the Republican Party and for whom the prosecutor can do favors — particularly when he's doing favors for judges — that's a problem," Burke says.

Mike DeWine for Ohio: "Big Heart"

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Published on Jun 26, 2017

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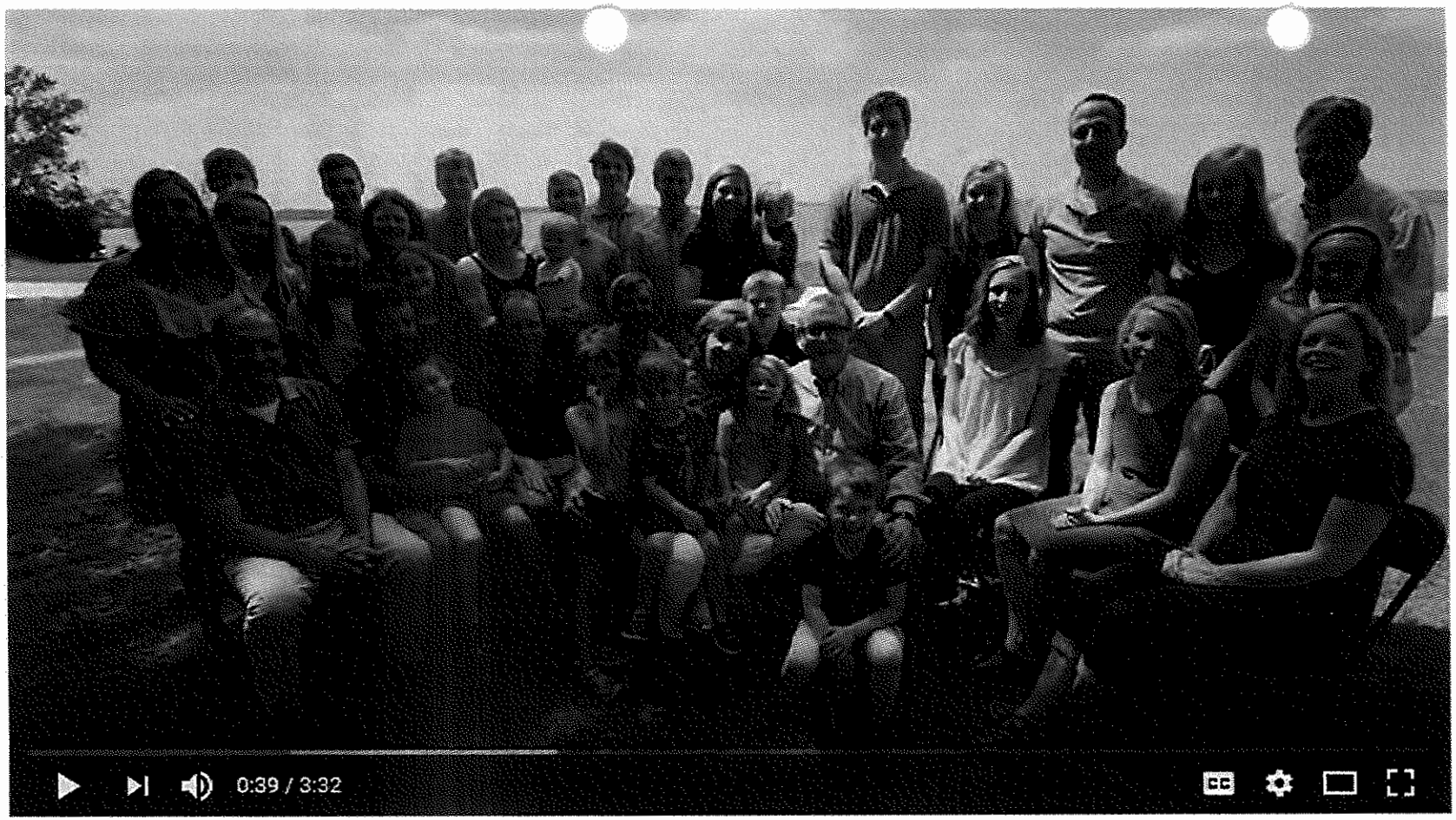

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Published on Jun 26, 2017

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Court of Appeals of Ohio

Eleventh Appellate District

Diane V. Grendell
Judge

Timothy P. Cannon
Judge

Colleen Mary O'Toole
Judge

111 High Street, N.E., Warren, Ohio 44481
Telephone: (330) 675-2650
Facsimile: (330) 675-2655
Ashtabula Geauga Lake Portage Trumbull

Cynthia Westcott Rice
Presiding/Administrative Judge

Thomas R. Wright
Judge

Shibani Sheth-Massacci
Court Administrator/Magistrate/
Administrative Counsel

August 16, 2017

Chief Judge Donna Carr
Ohio Court of Appeals Judges Association
161 South High Street, #504
Akron, Ohio 44308-1602

Grievance Matter filed March 17, 2017

Dear Judge Carr,

The undersigned panel has conducted a review of the above grievance. We received a response from counsel for the respondent on May 4, 2017. A follow up with questions from the panel was sent to counsel on June 30, 2017. A follow up response was sent to the panel from respondent's counsel on July 19, 2017. Copies of the referenced documents are attached.

Pursuant to Gov.Jud.R. II, Section 4(A)(2), and after review of the complaint, response and relevant code sections, the panel has determined that good cause exists for further investigation of the grievance. Please let us know if you have any questions.

Respectfully submitted,

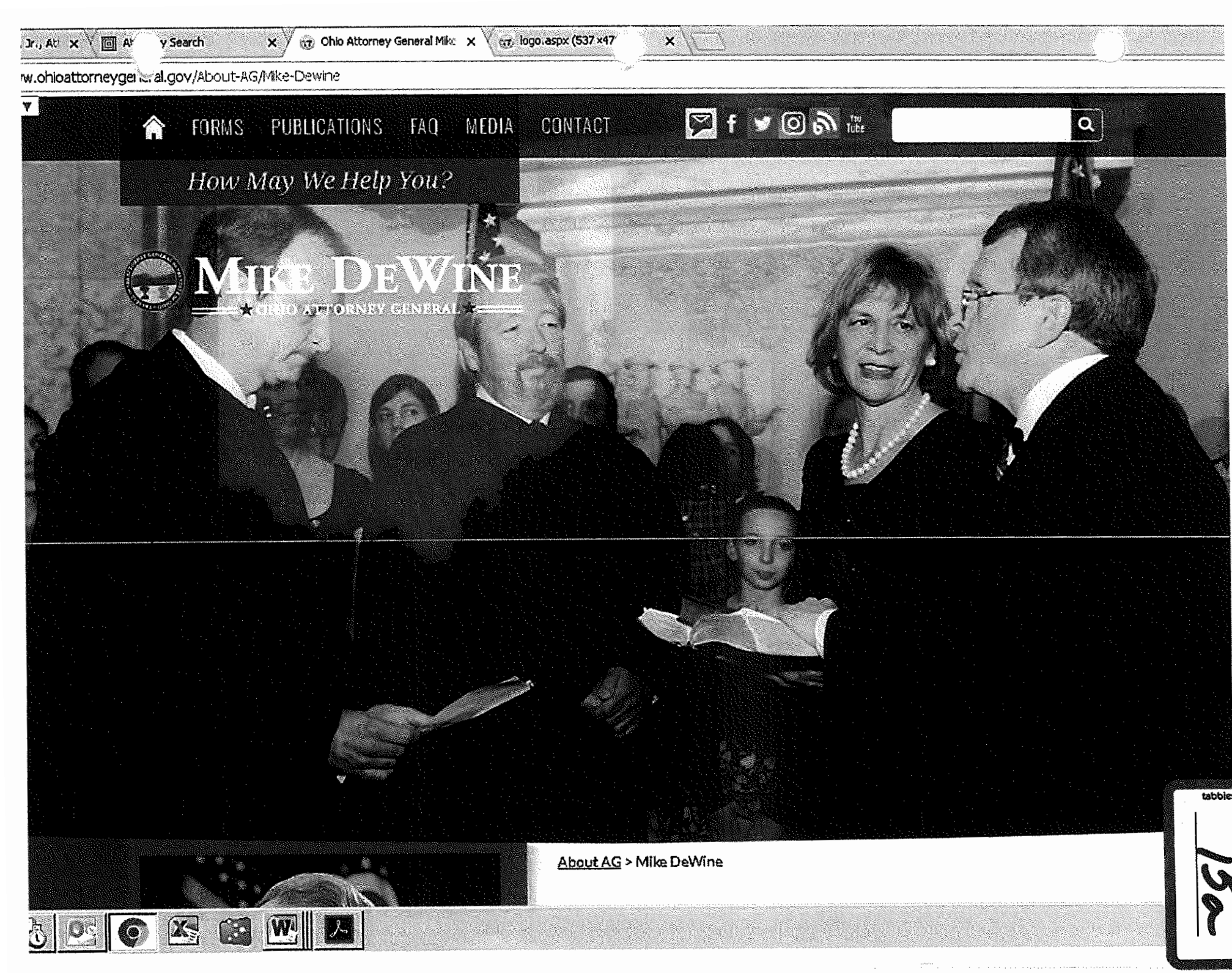
Hon. Timothy P. Cannon

E.L.S. by JM per consent

Hon. Elizabeth L. Schuster

M.H. by JM per consent

Hon. Marie Hoover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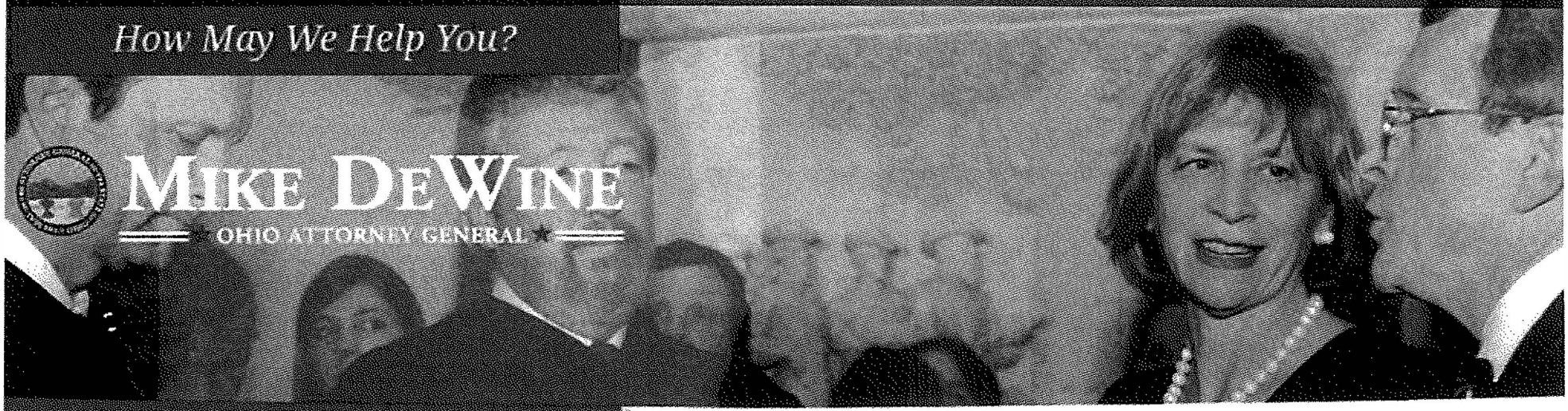


In This Section

Mary Mertz

Sheryl Creed Maxfield

Stephen Schumaker

Pamela Vest Boratyn

Jonathan Fulkerson

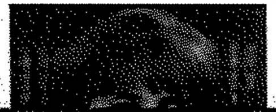
Kimberly Murnieks

Fred Nelson

Administration

Mary Mertz
First Assistant Attorney General

Phone: 614-728-2318
Bio



Sheryl Creed Maxfield
Chief Counsel

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DeWine Husted

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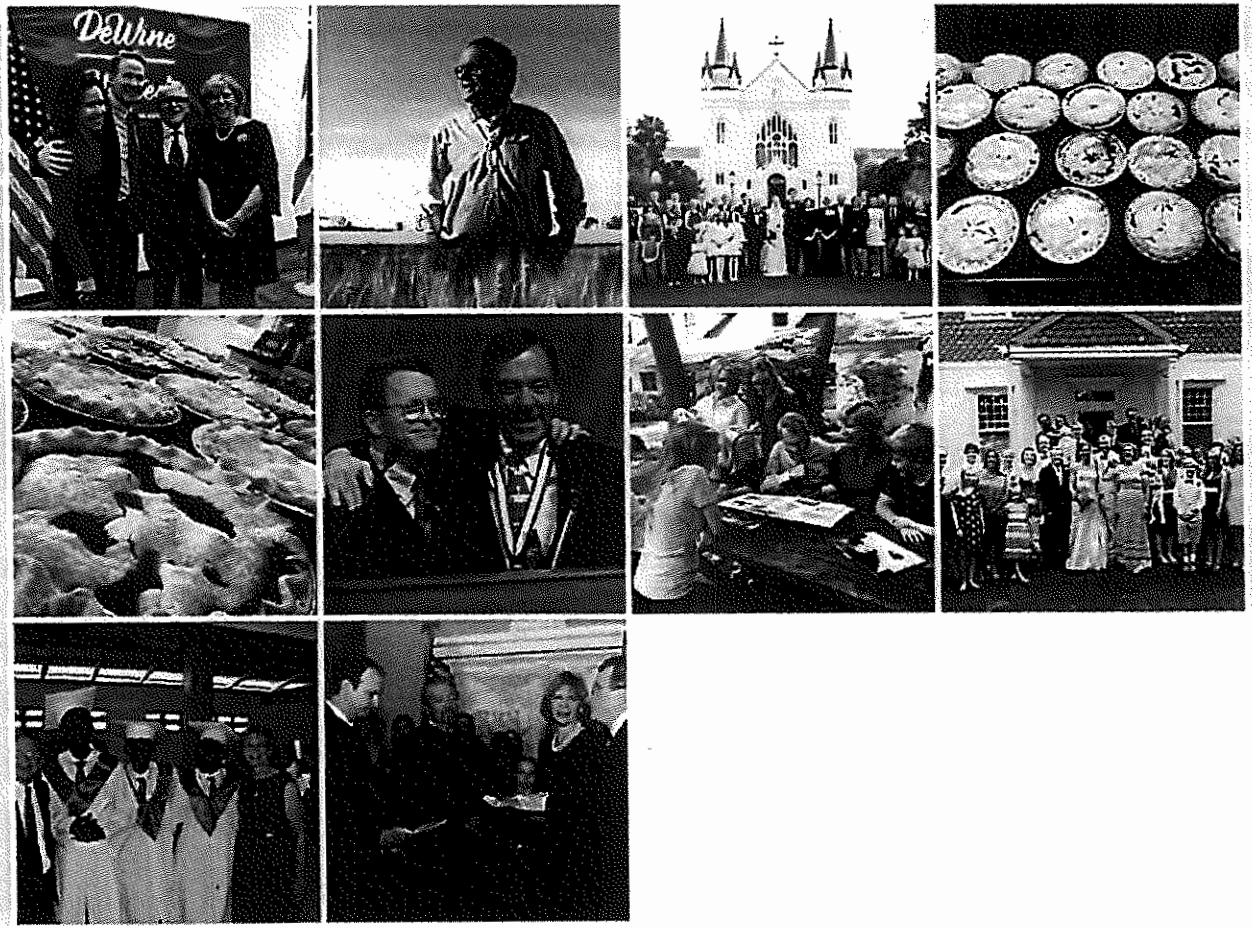

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Mike DeWine
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Pat and I were at the Friendly Sons of St. Patrick dinner in Cincinnati tonight!

CJ Bleghier, Jack R. Kincade, Lizzy Goodwin and 108 others like this.

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March 19 at 9:04am

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March 20 at 5:30pm

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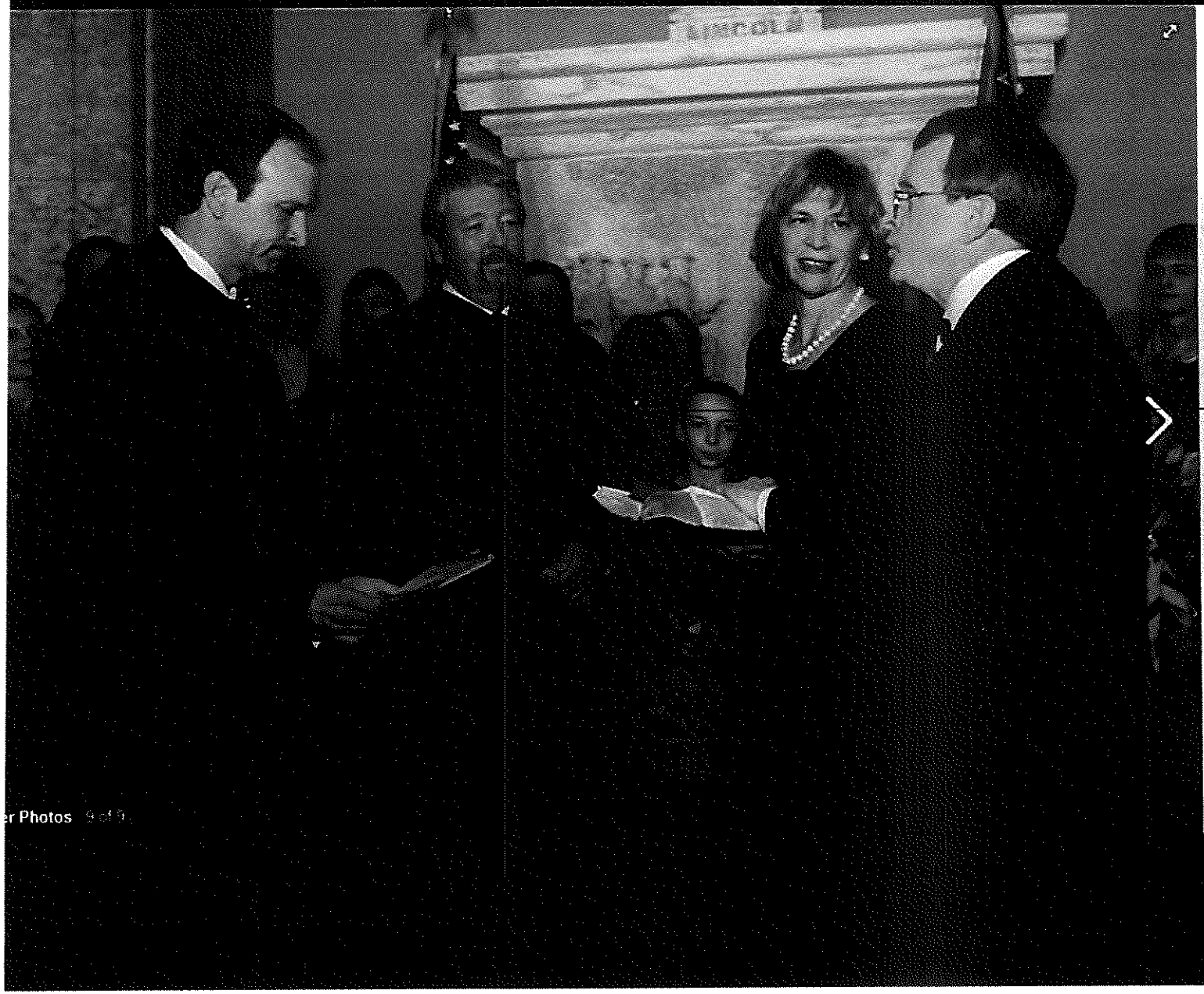

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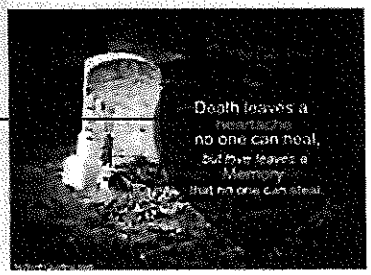

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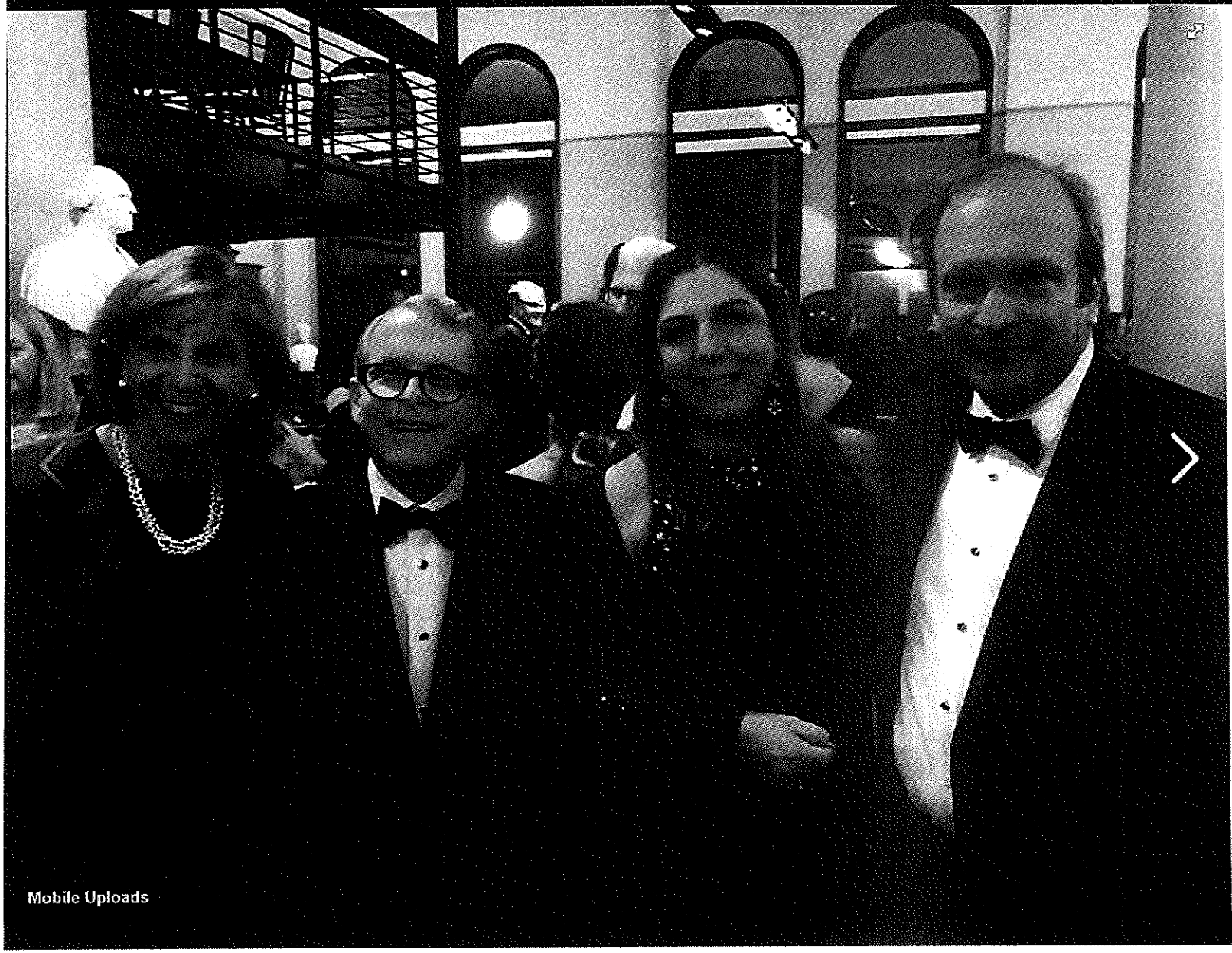

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Richard Cordray for Governor - Protect Ohio Families
Ad secure.cordrayforohio.com/
Join Richard Cordray in fighting for the people of Ohio.

Ohio Attorney General Mike DeWine - Mike DeWine
www.ohioattorneygeneral.gov/About-AG/Mike-Dewine
As Attorney General, **Mike DeWine's** priority is protecting Ohio's families. To better protect our kids, Attorney General DeWine created a special Crimes Against Children Unit to help identify, arrest, and convict sexual predators. He has also increased training for law enforcement and educators to help improve school safety, ...

Ohio AG Mike DeWine (@OhioAG) · Twitter
https://twitter.com/OhioAG

.@CantonRepdotcom on yesterday's Stark County opiate symposium: "What's going on in Stark County, I think, is a model for the rest of the state," DeWine said. www.cantonrep.com/news/...
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Ohio high school students: This Friday, Dec. 8, is the deadline to enter the 2017 Take Action Video Contest! You could win up to $2,500 in college scholarships. Check www.OhioAttorneyGeneral... for details. pic.twitter.com/xpawLZd...
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Great editorial in yesterday's Canton Repository on wise charitable giving, spurred by our action against the sham charity Cops for Kids. Good tips for your end of the year donations: www.cantonrep.com/opini...
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Mike DeWine - Wikipedia
https://en.wikipedia.org/wiki/Mike_DeWine
Richard **Michael DeWine** (born January 5, 1947) is an American lawyer and Republican Party politician from Cedarville, Ohio. DeWine is serving his second term as Ohio Attorney General, a seat he won election to in 2010 by defeating incumbent Richard Cordray. DeWine was sworn in on January 10, 2011. DeWine is a ...
Personal life · Political career · Political positions · Post-Senate career

Mike Dewine for Governor: Jon Husted becomes Mike DeWine's ...
https://www.mikedewine.com/
Jon Husted becomes **Mike DeWine's** running mate. Jon Husted is an accomplished conservative who shares **Mike DeWine's** passion for better jobs. Jon is a leader with an optimistic vision about Ohio's

Mike DeWine

Ohio Attorney General

Richard Michael DeWine is an American lawyer and Republican Party politician from Cedarville, Ohio. DeWine is serving his second term as Ohio Attorney General, a seat he won election to in 2010 by defeating incumbent Richard Cordray. Wikipedia

Born: January 5, 1947 (age 70), Springfield, OH

Office: Ohio Attorney General since 2011

Party: Republican Party

Spouse: Frances Struewing (m. 1967)

Previous offices: Senator, OH (1995–2007), Ohio State Senator (1981–1982)

Children: Pat DeWine, Alice DeWine, John DeWine, Brian DeWine, Mark DeWine, Rebecca DeWine, Anna DeWine, Jill DeWine

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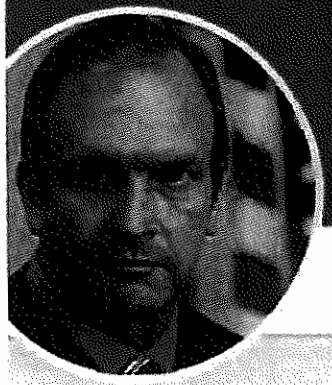

Tweets 1,539 | Following 657 | Followers 1,333 | Likes 749

stice Pat DeWine

tdewine

ce on @OHSupremeCourt. My job to make the law; it is to apply it fairly consistently.

atdewine.com

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61 Photos and videos

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Justice Pat DeWine @patdewine · 4h

Can you guess how many books make up the Ohio Supreme Court library Christmas Tree?

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@MikeDeWine

Ohio's 50th Attorney General. Husband to Fran, father of 8, grandfather of 23. DeWine/Husted for Ohio. Paid for by Mike DeWine for Ohio

Cedarville, Ohio

mikedewine.com

Joined April 2009

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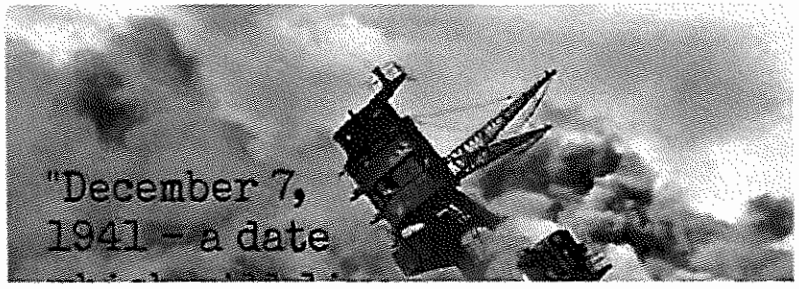
Mike DeWine @MikeDeWine · 9m

"...But always will our whole nation remember the character of the onslaught against us... No matter how long it may take us to overcome this premeditated invasion, the American people in their righteous might, will win through to absolute victory."

— Franklin D. Roosevelt



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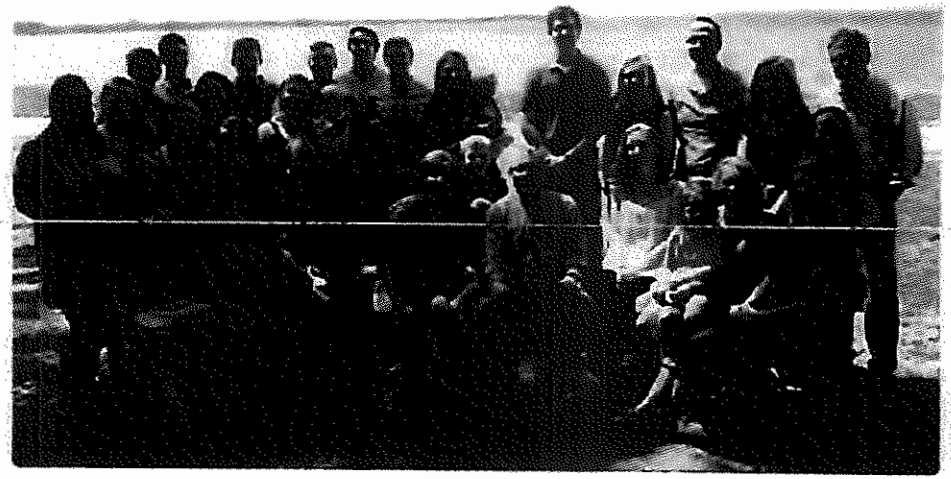
Justice Pat DeWine Retweeted

Mike DeWine @MikeDeWine · Jun 18

Being a dad is the greatest blessing of my life. Today, I invite you to hug your dad, give him a call, or take comfort knowing he loved you.



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Justice Pat DeWine @patdewine · Jun 14

Successful day on Lake Erie

ikeDeWine

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Justice Pat DeWine (@p...

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appellate practice class. Anyone with a syllabus or suggestions,

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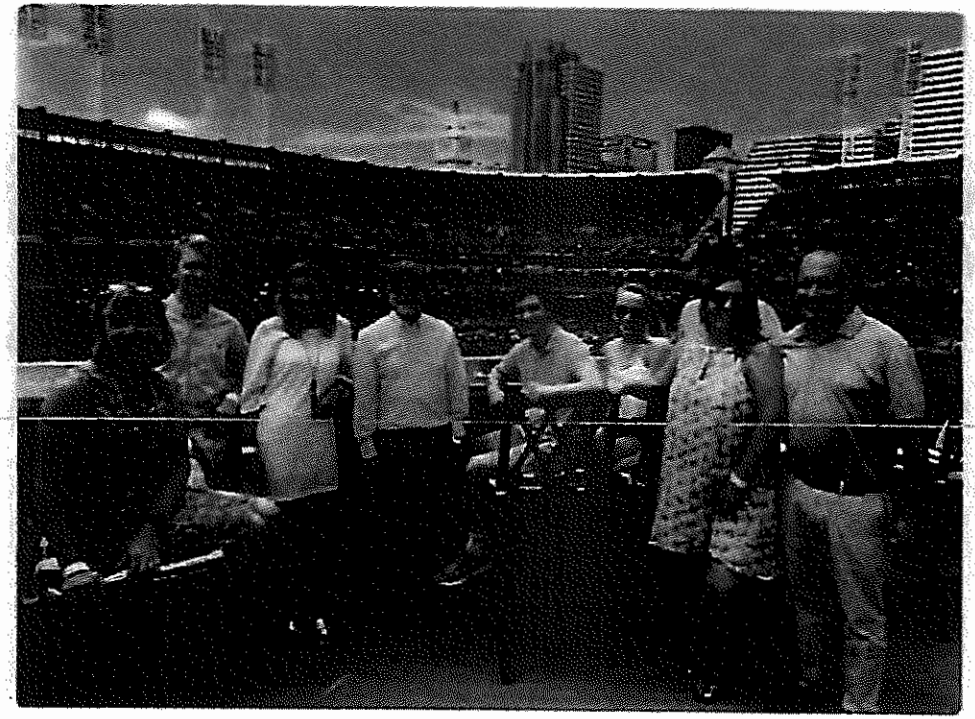
Justice Pat DeWine @patdewine · Jul 16

Our crew at the Reds game today!



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Justice Pat DeWine @patdewine · Jul 14

Burn

Mike DeWine (@MikeD

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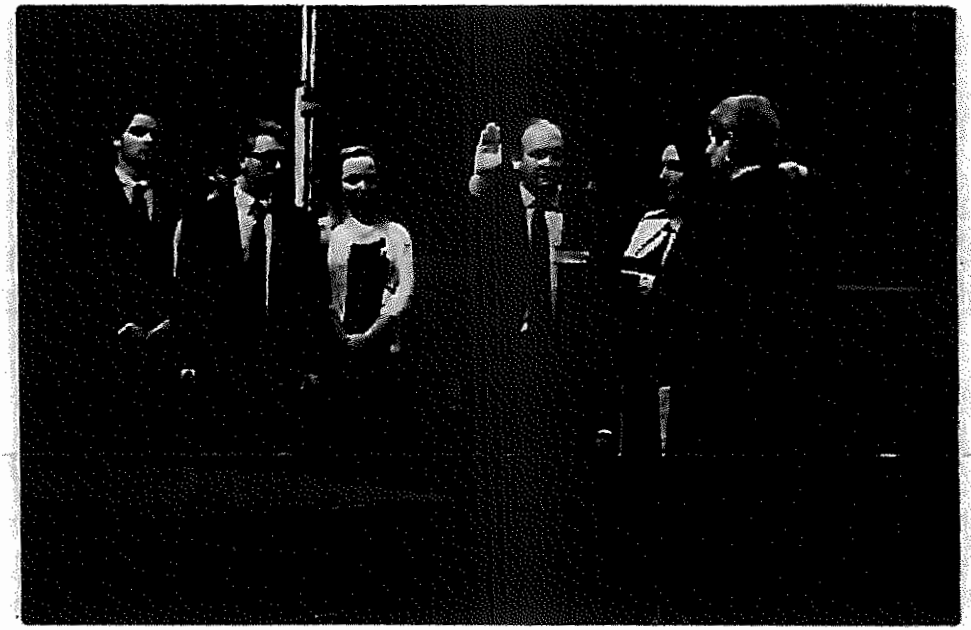
Mike DeWine @MikeDeWine · Feb 9

Fran and I were thrilled to be with family & friends as our son Pat was sworn-in at a formal ceremony at the Ohio Supreme Court.



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Mike DeWine @MikeDeWine · Feb 8

Congratulations to @jeffsessions on your confirmation as U.S. Attorney General!

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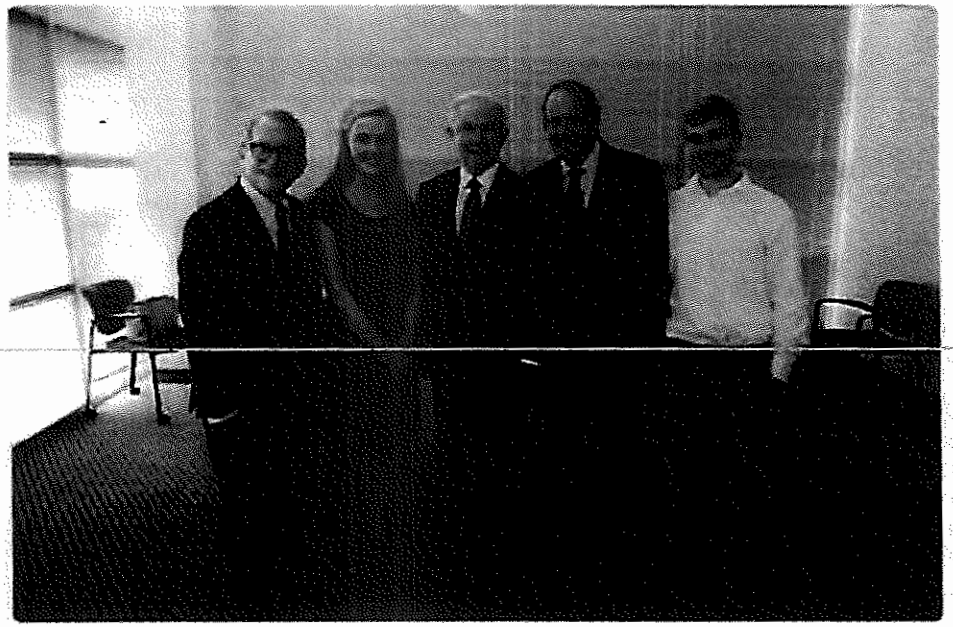
Mike DeWine @MikeDeWine · Aug 3

It was great to be with my friend U.S. Attorney General Jeff Sessions yesterday in Columbus.



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Mike DeWine @MikeDeWine · Aug 1

Watched @Browns practice yesterday with Nick, Jeanie, Steven, and Grady! #BrownsCamp

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EXHIBIT 26

Mike DeWine (@MikeD

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Mike DeWine @MikeDeWine · Jun 18

Being a dad is the greatest blessing of my life. Today, I invite you to hug your dad, give him a call, or take comfort knowing he loved you.

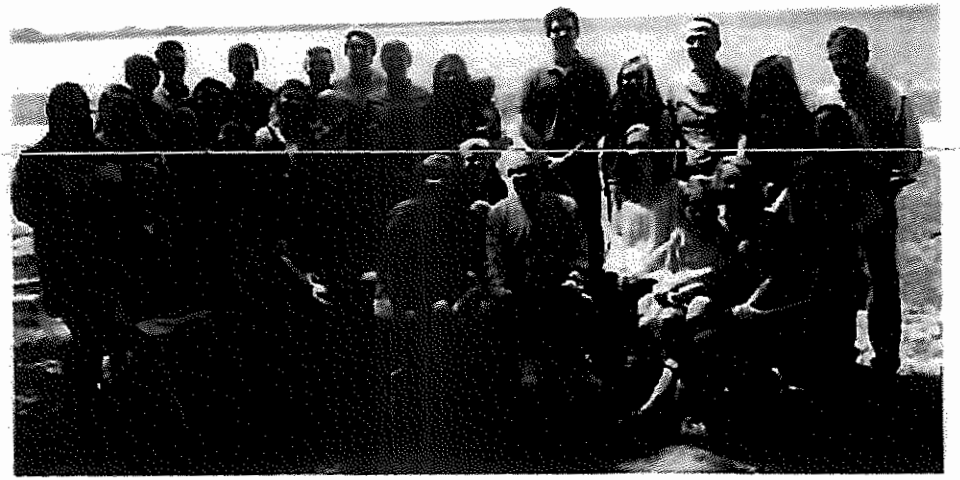

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EXHIBIT

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INFORMATION SHEET: ADVISORY OPINION NO. 2010-03 NEPOTISM RESTRICTIONS

What are the questions addressed in the opinion?

Can public officials or employees hire their family members or recommend their family members for a public job? If a public official's family member is lawfully hired, can the official participate in matters affecting the family member's employment? Can two family members serve the same public agency?

What are the answers in the opinion?

Public officials and employees cannot: (a) hire or use their positions to secure employment for their family members; (b) recommend or nominate their family members for public jobs with their own, or any other, public agencies; or (c) give to their family members, or use their positions to secure for their family members, raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or any other things of value related to their employment. Two family members can work for the same public agency, provided that both are able to comply with these restrictions.

What prompted this opinion?

As a reminder to all public officials and employees in the state, the Commission is issuing this advisory opinion that gathers information from its many previous advisory opinions on nepotism and provides examples of the law.

When will the conclusions of the opinion become effective?

The opinion became effective upon approval by the Commission.

For More Information, Please Contact:

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**THIS COVER SHEET IS PROVIDED FOR INFORMATION PURPOSES.
IT IS NOT AN ETHICS COMMISSION ADVISORY OPINION.
ADVISORY OPINION NO. 2010-03 IS ATTACHED.**

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Advisory Opinion
Number 2010-03
May 25, 2010

Syllabus by the Commission:

(1) Division (A)(1) of Section 2921.42 of the Ohio Revised Code provides that no public official shall knowingly "authorize or employ the authority or influence of" the official's office to secure authorization of the employment of a family member;

(2) Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code prohibit public officials and employees from using or authorizing the use of their public positions to secure employment, or employment-related benefits, for their family members;

(3) Public officials and employees cannot: (a) hire or use their positions to secure employment for their family members; (b) recommend or nominate their family members for public jobs with their own, or any other, public agencies; or (c) give to their family members, or solicit or use their positions to secure for their family members, raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or any other things of value related to their employment.

* * *

For more than twenty-five years, the Commission has issued many advisory opinions about the nepotism restrictions in the Ethics Law and related statutes. The Commission has explained that the public contract (R.C. 2921.42(A)(1)) and conflict of interest (R.C. 102.03(D) and (E)) restrictions apply to public officials and employees whose family members are seeking employment, or already working, with the agencies they serve. In this opinion, the Commission gathers information from its advisory opinions on nepotism and provides examples of the restrictions in the law.

Public Contract Law—R.C. 2921.42(A)(1)

R.C. 2921.42(A)(1) provides that no public official shall knowingly:

> Authorize, or employ the authority or influence of the public official's office to secure authorization of any public contract in which the public official, a member of the public official's family, or any of the public official's business associates has an interest.

A **"public official"** includes: "[A]ny elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity." R.C. 2921.01(A). The restriction in R.C. 2921.42(A)(1) applies to all individuals who are elected or appointed to, or employed by, any public agency, including but not limited to any state agency, county, city, township, school district, public library, and regional authority. The restriction applies regardless of whether the person is: (1) compensated or uncompensated; (2) serving full time or part time; or (3) serving in a temporary or permanent position.

A **"public contract"** is the purchase or acquisition of property or services, by or for the use of any public agency, specifically including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either. A public contract can be a written or oral agreement. Since 1985, before the General Assembly amended the definition in 1994 to specifically include employment, the Commission had consistently held that the "purchase or acquisition . . . of services" includes employment. Ohio Ethics Commission Advisory Opinions No. 85-011, 90-010, and 92-012. See also *Walsh v. Bollas* (1992), 82 Ohio App. 3d 588. A person has an interest in one's own employment. See, generally, *State v. Urbin* (2002), 148 Ohio App. 3d 293, 100 Ohio St. 3d 1207 (2003).

"**Authorizing**" a contract includes voting on, signing, or taking any other action to award the contract. Adv. Op. No. 2001-02. Employing the "**authority or influence**" of one's position to "**secure authorization of**" a contract includes a much broader range of activities, such as recommending, deliberating or discussing, and formally or informally lobbying any public official or employee about the contract. Id.

Member of the Family

The definition of "member of a public official's family" includes, but is not limited to, these relatives of an official or employee, *regardless of where they live*:

1. Parents and step-parents;
2. Grandparents;
3. Spouse;
4. Children and step-children, whether dependent or not;
5. Grandchildren; and
6. Siblings.

Adv. Op. No. 2008-03. Any other individual related to an official or employee by blood or marriage is a "member of the official's family" if he or she lives in the same household with the official or employee. Id. For example, if a public official's cousin, uncle or aunt, niece or

nephew, or in-law lives in the same household with the official, that person is a member of the official's family.

Conflict of Interest Laws—R.C. 102.03(D) and (E)

In addition to the public contract restrictions, R.C. 102.03(D) and (E) apply to public officials or employees when their family members are seeking employment with, or are employed by, the same public agency they serve. R.C. 102.03(D) and (E) provide that:

> (D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.
>
> (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

R.C. 102.03(D) and (E) apply to any person who is elected or appointed to, or employed by, any public agency, except teachers, instructors, and other educators who do not perform or have the authority to perform, supervisory or administrative functions. R.C. 102.01(B) and (C).[1]

"**Anything of value**" includes money and every other thing of value. R.C. 103; 102.03(G). Employment and the compensation and benefits that accompany it are within the definition of anything of value. Adv. Op. No. 92-012.

A thing of value manifests a "**substantial and improper influence**" on a public official or employee if it could impair the official's or employee's objectivity and independence of judgment with respect to his or her public duties. Adv. Ops. No. 91-010 and 95-001.

The Commission has stated that voting on, recommending, deliberating about, discussing, lobbying, or taking any other formal or informal action within the scope of a public official's or employee's public authority is "**use of,**" or "**authorization of the use of**" **the authority or influence** of a public official's or employee's office or employment. Adv. Op. No. 88-005. Therefore, any such conduct related to the hire of a family member would be a violation of this section.

[1] While teachers and other educators are exempted from the conflict of interest law, they are fully subject to the public contract law (R.C. 2921.42), also discussed in this opinion.

General Nepotism Restrictions

The "nepotism" or "family hire" restrictions in R.C. 2921.42(A)(1) and 102.03(D) and (E) prohibit all public officials, regardless of their job duties or level of authority, from:

a. Hiring any of their family members;
b. Voting to authorize the employment of a family member; and
c. Recommending, nominating, or using their positions in any other way to secure a job for a family member.

The Ethics Commission has held, however, that R.C. 2921.42(A)(1) and 102.03(D) and (E) do not amount to a "no-relatives" policy. Adv. Op. No. 90-010. See also *State ex rel. Halleck v. Delaware County Commissioners* (Dec. 13, 1996), Delaware App. No. 96CA-E-04-021 (holding that R.C. 124.11(B)(1) prevents local governments from implementing a broadly inclusive "no relatives" employment policy). The Ethics Law and related statutes usually do not prohibit two family members from working for the same public agency. In most cases, provided that public officials comply with nepotism restrictions, their family members can compete with others for public employment. For example, the adult daughter of a city council member could compete for a posted job in the city's transportation department and, if she is the most qualified candidate, can be hired by city council. However, the council member is prohibited from directly hiring his or her daughter, voting to authorize his or her daughter's employment, recommending the hire of his or her daughter, and taking any other action to secure the hire, such as discussing his or her daughter's qualifications with the transportation director.

If a public official's family member has been lawfully hired by the agency, without the official's involvement in the hire, R.C. 2921.42(A)(1) and 102.03(D) and (E) prohibit the official from:

a. Giving the family member raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or other things of value related to employment; and
b. Using such official's or employee's public position to secure any of these employment-related benefits for a family member.

R.C. 2921.42(A)(4) prohibits a public official from having an interest in a public contract entered into by a public agency with which he or she is connected. A prohibited "interest" is a definite and direct interest, rather than an indirect interest. Adv. Op. No. 92-017. If a public official's family member is hired by the public agency, he or she generally does not have an interest prohibited by R.C. 2921.42 in the family member's employment contract, unless the family member is the official's minor child. See Adv. Op. No. 93-008 (a parent has an interest in the earnings of an unemancipated minor child). Even though the official may benefit from the hire of a family member, because his or her family member's income helps to support the household or the official is covered under the family member's insurance, the Commission has concluded that the official does not have an "interest" in the contract. Adv. Op. No. 92-017.

However, if the official receives some thing of value, as a direct result of his or her family member's employment, the official may have an interest in the contract.

Official Required to Participate in Hiring Process

Whenever any statute, resolution, ordinance, rule, or policy requires that a particular public official participate in any part of the hiring process, the family members of that official cannot be hired by the public agency without a violation of R.C. 2921.42(A)(1).

For example, R.C. 3319.07(A) states: "In all school districts and in service centers no teacher shall be employed unless such person is nominated by the superintendent of such district or center." There is a similar requirement for the nomination of administrative officials (including assistant superintendents, principals, assistant principals, and other administrators). R.C. 3319.02(B) and (C). Because the law requires that a superintendent nominate the hire of all teachers and administrators, a superintendent's family member cannot be hired by the district or service center without a violation of R.C. 2921.42(A)(1).

Continued Employment

If a person is elected, appointed or employed in a position in an agency where a family member is already employed, the law does not prohibit the family member from continuing to work for the agency. However, a public official who is an administrator or governing board member for an agency is prohibited from using such official's public authority, in any way, to secure job-related benefits for the employee who is a family member. A public official is not prohibited from taking actions that affect all employees of the agency, including the official's family member, in the same manner. Adv. Ops. No. 92-012 and 98-003.

For example, if the adult child of a newly elected county recorder worked for the recorder's office before the parent was elected, the employee can continue in that position after the parent becomes recorder. However, the county recorder would be prohibited from promoting or giving raises to the child, and from taking any other action to secure unique or differential benefits for the child.

Union Contracts and Uniform Benefits

If a public official's family member, other than a spouse, is employed by the same public agency, the official can vote, discuss, deliberate, lobby, or otherwise participate in the ratification or rejection of a negotiated collective bargaining agreement that affects the family member in the same way as all other employees of the agency, unless the family member is an officer or employee of the union, or on the negotiating team for the union. Adv. Ops. No. 89-005 and 98-003. Public officials who are members of a governing board can also participate in the board's discussions of contract terms and negotiation strategy for a collective bargaining agreement affecting family members, although the Commission has recommended that public officials refrain from taking a more active role in the negotiation of these agreements. Adv. Op. No. 89-005. But see Adv. Op. No. 98-003 (a school district superintendent can participate in the

negotiation of a collective bargaining agreement affecting a family member (other than his or her spouse) employed by the district, provided that the family member is affected in the same manner as other similarly situated employees and is not an officer, board member, or a member of the negotiating team of the labor organization).

Because a person can be covered by his or her spouse's employer-provided health insurance, the law may apply somewhat differently to a public official whose *spouse* is employed by the same public agency. If a public official's spouse is employed by the same public agency, and the official is covered by the spouse's employment-related health insurance, the official cannot participate, in any way, in the ratification of a collective bargaining agreement covering the family member. Adv. Op. No. 92-013. If the official is not covered by his or her spouse's employment-related health insurance, the official can participate in ratification or rejection of the contract in the same manner that is discussed in the previous paragraph.

Voting to Authorize Employment—Governing Board Member

A governing board member, such as a township trustee, county commissioner, or city council member, is prohibited from voting on an ordinance, resolution, or other decision that authorizes the employment of a family member even if the board member did not participate in the hiring process. Conversely, the governing board member should not discuss or deliberate about the hire, or recommend the family member for employment, even if the board member abstains from the vote. Both of these restrictions apply to an official even if another official or employee of the agency interviewed the candidate, and has selected the family member, after a fair and open process.

A governing board member is prohibited from voting on an ordinance, resolution, or other decision to authorize the hire of a family member even if the board member's vote is not the "deciding" vote necessary to pass the ordinance or resolution.

Recommending, Reviewing Applications, or Taking Other Actions Affecting Employment

A public official is prohibited from recommending a family member for public employment, even if other officials and employees will make the final decision about whether to hire the employee. When a public official's family member has submitted an application for a public job, or is otherwise competing for the position, the official cannot review other applications, interview, rate, or rank other candidates, or take any other action in connection with the hiring activity for that position.

An official cannot recommend a family member for employment by the agency he or she serves or recommend the hire of a family member by *any other* public agency. For example, a city council member who has frequent official interactions with a township is prohibited from asking a township official or employee to hire the council member's relative.[2]

[2] Public officials are also prohibited from using their positions to secure employment for their family members from a private company or organization that is doing or seeking to do business with, regulated by, or interested in matters before the agencies they serve. Adv. Op. No. 2009-06.

Penalties

The Ethics Law and related statutes are criminal laws. If an official is convicted of violating an ethics law, the official may receive a jail sentence and/or be fined.

R.C. 2921.42(A)(1) (authorizing a family member's contract) is a fourth-degree felony with a maximum penalty of eighteen months in prison and/or a $5000 fine. R.C. 102.03(D) and (E) (soliciting or using position to secure anything of value) are first-degree misdemeanors with maximum penalties of six months in prison and/or a $1000 fine.

Also, R.C. 2921.42(H) provides that a contract entered into in violation of R.C. 2921.42 is void and unenforceable. Therefore, an employment contract entered into in violation of R.C. 2921.42(A)(1) would be void and unenforceable.

Conclusion

This advisory opinion is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules.

Therefore, it is the opinion of the Ohio Ethics Commission, and you are advised as follows: Division (A)(1) of Section 2921.42 of the Ohio Revised Code provides that no public official shall knowingly "authorize or employ the authority or influence of" the official's office to secure authorization of the employment of a family member. Divisions (D) and (E) of Section 102.03 of the Ohio Revised Code prohibit public officials and employees from using or authorizing the use of their public positions to secure employment, or employment-related benefits, for their family members. As a result, public officials and employees cannot: (a) hire or use their positions to secure employment for their family members; (b) recommend or nominate their family members for public jobs with their own, or any other, public agencies; or (c) give to their family members, or solicit or use their positions to secure for their family members, raises, promotions, job advancements, overtime pay or assignments, favorable performance evaluations, or any other things of value related to their employment.

By my signature below, I certify that Advisory Opinion No. 2010-03 was rendered by the Ohio Ethics Commission at it meeting on May 25, 2010.

Ben Rose, Chair
Ohio Ethics Commission