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## Roach and recusal

It's not surprising that Peter Ervin, an attorney for the estate of David Dean Sr., would be worried.

His suit alleging legal malpractice by the Louisville law firm Frost Brown Todd seems headed toward the state Supreme Court, and he's afraid the impartiality of Justice John Roach has been compromised by the campaign finance support he's receiving from seven Frost Brown Todd attorneys.

They were among 26 co-hosts of a fund-raising dinner for Mr. Roach, who is seeking a full term after having been appointed by Gov. Ernie Fletcher.

So Mr. Ervin has asked the high court to block the justice from sitting on the case.

Mr. Roach's election opponent, Fayette Circuit Judge Mary Noble, says that, while no laws or rules are being broken, the fund raising does raise an "appearance of improprieties."

She won't stop raising money herself, mind you, but she promises not to look at the names of her donors. Of course, she made that promise while looking at the faces of donors during a fund-raising event.

This is not an inconsiderable issue, especially with almost all Kentucky judgeships up for election next year.

Wouldn't you wonder whether the political giving might have some influence, conscious or unconscious, on Mr. Roach if you were representing the Dean estate? After all, among the event's Frost Brown Todd hosts, at \$500 each, were Ed Glasscock, the powerful business and civic leader, and Sheryl Snyder, who is representing the Governor in the JOBTROT scandal.

But wouldn't you also worry if you had a case before the Supreme Court with Ms. Noble as a justice if you faced, on the other side, folks on whose generosity she had depended to finance her campaign?

Solutions aren't neat or easy. Judge Noble may pledge not to look at lists of donors, but doesn't she have an ethical obligation to know who is raising money in her name and from whom? Will she continue to sit on Fayette Circuit Court and let attorneys who are arguing cases before her give to her campaign?

A spokeswoman for Justice Roach says he pledges to rule "on the merits of the case and Kentucky law," in the Dean case and all others.

But, clearly, given the degree and prominence of the Brown Frost Todd support for him, he should now excuse himself from the Dean estate dispute.

Whether he or Ms. Noble recuses in future cases will likely depend on whether court-watchers and interested parties raise the issue and on the circumstances that created the conflict.

Some say the legislature should simply outlaw political giving in judicial races, since it's virtually impossible to make sure judges quickly and properly absent themselves from any case in which the potential for improper influence appears to loom. Others say more should be done to let the public know who gives what to whom, in a timely and accessible way. And still others say the whole mess shows why judges shouldn't be chosen in the free-wheeling way Kentucky selects them.

There are competing interests here:

As Mr. Ervin says, contributions "may affect the public's confidence in this court" and "challenge the impartiality of even the most fair-minded jurist."

But as attorney Jim Milliman, another co-host of the Roach dinner, says, it's "the duty of a member of the bar to support the candidates for judge that he feels are most qualified."

There's no easy resolution to that dilemma.

Every judgeship except the staggered Supreme Court seats will be up for grabs across Kentucky next year. Attorneys, advocacy groups and other interested parties will be giving lots of money to their favored candidates. This is not the last you will hear about the issue.

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