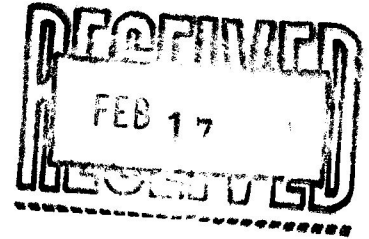


JUDICIAL ETHICS COMMITTEE

Advisory Opinion 09-1
Issued February 12, 2009



Issue

Is a Judge of the Superior Court required to recuse in cases in which the Judge’s lawyer son-in-law and/or his law firm appears before the Judge?

Statement of Facts

The Judge’s daughter is engaged to be married to a lawyer who is an associate at a prominent “X” County law firm. He practices in the areas of taxation and estate planning. He is not involved in litigation matters. The Judge inquires whether he should recuse in all matters wherein his son-in-law’s law firm serves as counsel, or should he disclose the information in advance to the involved parties and recuse if requested to do so.

Applicable Provisions

Canon 3E (1) and (2) of the Code of Judicial Conduct provide in pertinent part as follows:

(1) A judge shall disqualify himself or herself on the judge’s own initiative in any proceeding in which the judge has reason to believe that he or she could not act with complete impartiality. A judge acting under this subsection (1) need not state the grounds of disqualification.

(2) A judge may disqualify himself or herself on the judge’s own initiative without stating the grounds for disqualification, and shall disqualify himself or herself on a motion for recusal made by a party, in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party’s lawyer.

* * * * *

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent, or child wherever residing, or any other member of the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse or a person within the third degree of relationship to either of them, or the spouse of such a person . . .

(ii) is acting as a lawyer in the proceeding.

(emphasis added).

Under the Definitions section in Part II of the Code of Judicial Conduct, the following definition appears:

Member of the judge's family denotes a spouse, a child, grandchild, parent, grandparent, or other relative by blood or marriage, or a person with whom the judge maintains a close personal relationship.

Code Part II, Section 3(L). In addition, a judge's child is within the third degree of relationship to the judge. Id. Section (P).

Discussion

The first issue, as the Committee understands it, is whether under the circumstances disqualification is required under Code 3E(2)(d)(ii), even if the judge has no reason to believe that the judge cannot act with complete impartiality.

Initially, although disclosure would be required under Canon 3E(3), disqualification would not be required under Canon 3E(2) unless one of the parties seeks recusal. Given the facts above and the contemplated marriage, the Committee assumes that the future son-in-law lawyer would become a member of the Judge's family as defined, and, in addition, one with whom the Judge maintains a close personal relationship.

Just because the law firm employing the son-in-law represents a party in a given case does not mean that the son-in-law is “acting as a lawyer in the proceeding.” But if the son-in-law is personally working on or has worked on the matter, even though he does not personally appear in court, then Canon 3E(2)(d)(ii) would apply.

The remaining issue is whether under Canon 3E(2)(c) the judge’s child can be considered to have an economic interest in the subject matter of a given controversy simply because her husband works as an associate at a law firm that represents one of the parties in a pending case before the judge (even though the judge’s son-in-law is not personally involved). In the Committee’s view, her spouse’s work as an associate at a law firm would not give the judge’s daughter an economic interest in every controversy where the law firm is concerned.

Conclusion

If the son-in-law lawyer is acting as an attorney in the proceeding before the Judge and a motion to recuse is filed, the Judge shall disqualify himself.

While we are sure that the Judge will disclose to all the litigants his future son-in-law’s relationship with the “X” County law firm, the Judge will have the judicial discretion to determine whether he cannot judge the proceeding impartially, if no motion to recuse is filed.

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