



Indiana Judicial Nominating Commission Indiana Commission on Judicial Qualifications

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ADVISORY OPINION

Code of Judicial Conduct
Canon 3

#1-89

The Indiana Commission on Judicial Qualifications issues the following advisory opinion concerning the Code of Judicial Conduct. The views of the Commission are not necessarily those of a majority of the Indiana Supreme Court, the ultimate arbiter of judicial disciplinary issues. Compliance with an opinion of the Commission will be considered by it to be a good faith effort to comply with the Code of Judicial Conduct. The Commission may withdraw any opinion.

ISSUE

At issue are questions pertaining to the necessity of disqualification under Canon 3C of the Code of Judicial Conduct. Specifically, the issues are:

1. Whether a judge is disqualified in a proceeding in which a city attorney or county prosecutor has entered an appearance when the judge's spouse or near relative acts as a deputy city attorney or deputy prosecutor.
2. Whether a judge is disqualified in a proceeding in which a law partner, associate, or office mate of the judge's spouse or near relative has entered an appearance.
3. Whether a judge in a multi-judge "unified" court is disqualified in a proceeding in which the spouse or near relative of another judge in the unified court has entered an appearance.

ANALYSIS

Canon 3C provides in part:

- (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(d) he or his 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;
- (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding....

The fact that a lawyer in a proceeding has a professional affiliation with a near relative or spouse of a judge does not, in itself, disqualify the judge. See Thode, Reporter's Notes of Code of Judicial Conduct p. 15 (1973). Under Canon 3, the issue is whether the judge's impartiality may be reasonably questioned by the fact of the affiliation and whether the judge's relative or spouse is known by the judge to have a substantial interest in the outcome of the proceeding. Id.

Where the judge's relative or spouse is a deputy prosecuting attorney or deputy city attorney, and has not participated at all in the preparation of the case at bar, a judge is not necessarily disqualified on the occasion of an appearance by another member of the prosecuting attorney's or city attorney's offices. See, ISBA Legal Ethics Committee Opinion No. 2 of 1983, 28 Res Gestae 450-51 (February 1985). Unlike a lawyer's interest in a law partner's cases, a deputy government attorney is usually engaged in a case only when he or she has actually worked on it. See generally, Frank, Disqualification of Judges: In Support of the Bayh Bill, 35 Law and Contemporary Problems 43 at 47 (1970), cited in Laird v. Tatum (1972) 409 U.S. 824, 93 S.Ct. 7, 34 L.Ed.2d 50. The progression of a deputy prosecutor's or deputy city attorney's career, and his or her financial gains and losses, do not depend in any real sense on the outcomes of cases involving others in their offices. Absent other indicia of potential conflict, a judge will be presumed to act impartially in a government case despite a relative's career as a deputy government attorney.

By contrast, law partners or associates who share good will, profits, and losses, are engaged in one another's cases regardless of the identity of the attorney of record. Thus, a judge's disqualification when the spouse's partner or associate enters an appearance is required by Canon 3C. See, ISBA Legal Ethics Opinion No. 2 of 1984, 29 Res Gestae 38-39 (July 1985). Not only would the judge's impartiality reasonably be questioned by a failure to disqualify, Canon 3C(1), but the relative or spouse will likely have an interest in the proceeding which could be substantially affected by the outcome. Canon 3C(1)(d)(iii). However, a mere office-sharing arrangement between lawyers will not, per se, require a judge's disqualification when the office mate of the judge's spouse or near relative enters an appearance. Id. The judge may entertain the case so long as the attorneys do not share liabilities, profits, responsibilities, letterheads and telephone listings, have only the connection that their offices are physically connected, and in no way invite a reasonable

conclusion of a deeper nexus. Id. This relationship between the attorney of record and the judge's relative or spouse does not require the judge's disqualification.

Finally, the question is whether a judge in a multi-judge unified court is disqualified if a colleague on the same court would be disqualified by reason of an appearance filed by the colleague's spouse or spouse's partner or associate. The characteristics of a unified court, such as the single order book and the possibility of the judges acting in concert, may create potentials for ethical traps when one judge has a conflict requiring disqualification, but the Commission agrees with the opinion of the State Bar Ethics Committee that no Per se violation occurs when a judge in a unified system presides over a case in which a colleague's spouse or near relative has entered an appearance. See, ISBA Legal Ethics Opinion No. 2 of 1984, 29 Res Gestae 38-89 (July 1985). So long as the court's unification is administrative in nature and in no way describes the judges' adjudicative functions, the disqualification of one does not necessarily mandate disqualification of the entire court.

CONCLUSION

A judge is not necessarily disqualified from a proceeding in which a city attorney or county prosecutor has entered an appearance when the judge's spouse or near relative acts as a deputy city attorney or deputy prosecutor.

A judge is disqualified from a proceeding involving the partner or associate of the judge's spouse or near relative, but is not necessarily disqualified when an appearance is entered by an attorney having a mere office-sharing arrangement with the judge's spouse or near relative.

Finally, a judge in a unified court is not necessarily disqualified from a proceeding involving the spouse or near relative of another judge on the court.