

**JUDICIAL ETHICS ADVISORY COMMITTEE
OF THE
STATE OF DELAWARE**

The Hon. Joseph R. Slight, III, Chair
The Hon. Mardi F. Pyott, Vice Chair
The Hon. Kenneth S. Clark, Jr., Secretary
The Hon. James T. Vaughn, Jr.
The Hon. Sheila G. Blakely
Hon. Donald F. Parsons, Jr.
Hon. Robert B. Coonin

JEAC 2004-6

December 30, 2004

Dear Judge _____ :

You have requested an advisory opinion from the Judicial Ethics Advisory Committee (hereinafter "Committee") regarding whether you may attend a holiday reception given by the _____ to recognize a group of members of the Family Law Section of the Delaware State Bar Association. You indicated to the committee that you were the trial judge in a custody dispute currently on appeal to the Supreme Court. In the course of that trial a motion to recuse was filed by the father in the custody dispute (hereinafter "Father") on the grounds that you knew his mother. You stated that you were only a casual acquaintance of his mother and denied this motion for recusal after conducting a *Los*¹ analysis and advising the parties that you knew Father's mother only slightly. Father's sister is the executive director of the _____. You advised the Committee that, as with Father's mother, you are only a casual acquaintance of Father's sister.

THE COMMITTEE'S ADVICE

The Committee believes for the reasons outlined below that your acquaintance with Father's sister would not prohibit your attendance at the holiday party. However, the Committee recommends that you consider whether there is any possibility of an appearance of impropriety based upon the mission or activities of the sponsoring organization.

APPLICABLE CANONS OF JUDICIAL CONDUCT

Canon 2(A) and 2(B) of the Delaware Judicial Code of Conduct provide:

A judge should avoid impropriety and the appearance of impropriety in all activities.

¹ *Los v. Los*, 595 A. 2d 381 (Del. 1991)

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit others to convey the impression that they are in a special position to influence the judge....

Canon 3(C) (1) (a) states:

C. Disqualification. (1) A judge should disqualify himself or herself in a 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 personal knowledge of disputed evidentiary facts concerning the proceeding;...

DISCUSSION

Because the case about which you have written is currently on appeal and because, as a custody case, the parties, may have other occasion to appear before you, the Committee views your question as being whether your attendance at the function would require you to recuse yourself in the future.

In answering this question, the Committee looks to the Delaware Supreme Court opinion of *Los v. Los*, 595 A. 2d at 385 and its prior opinion in JEAC 1997-4. Under *Los v. Los*, a judge considering the question of whether recusal is required must engage in a two-part analysis. First, the judge must, as a matter of subjective belief, be satisfied that he or she can proceed to hear the cause free of bias or prejudice concerning that party. Second, even if the judge believes that he or she has no bias, the judge must consider whether there is the appearance of bias sufficient to cause doubt as to the judge's impartiality.

You have indicated that you have already performed a *Los* analysis with regard to Father's mother and declined to recuse yourself. As you have further indicated in regard to a question from the Committee that you have only an acquaintance with Father's sister (who is the head of the _____), the Committee assumes that you have already implicitly concluded that under a *Los* analysis, your acquaintance with the sister would not provide a basis to require any future recusal and that you are seeking to determine whether your attendance at the function would change this analysis by creating an appearance of impropriety.

As the Committee stated in JEAC Opinion 1997-4, in discussing the *Los* standard:

[T]he appearance of impropriety or bias standard under Canons 2 and 3(C)(1) require recusal “not merely when the judge’s impartiality might somehow be questioned, but only when it may reasonably be questioned.” A judge’s mere incidental and relatively insignificant contact with a potential witness should not cause a reasonable person to question that judge’s impartiality. The mere “sound of controversy” does not automatically create a disqualifying appearance of judicial bias.

JEAC Opinion 1997-4 at 2-3 (citations omitted).

Here, not only are you only casually acquainted with Father’s sister, the invitation from the _____ shows that you are merely one of 25 persons who are being thanked for *pro bono* work in improving access to legal information and that the invitation has been extended by the 25 commissioners as well as the Director and staff.² Thus, the Committee believes that your attending this function would not appear to raise any ground for an appearance of impropriety based upon your acquaintance with Father’s sister. Of course, should the occasion arise in the future for Father’s sister to be a witness before you, the Committee would advise you to disclose your acquaintance with her to the parties.

The Committee finds no appearance of impropriety in your attendance based upon your acquaintance with Father’s sister. However, the Committee recommends that you review the perception of the _____ by the members of the Family Law bar and the public to ensure that the organization is one which is not associated with any specific Family Law-related positions which could lend an appearance of impropriety, in a more general sense, to your attendance.³

For the Committee:

Sheila G. Blakely
Judicial Ethics Advisory Committee

Cc: Members of the Judicial Ethics Advisory Committee

² Furthermore, judges are not generally required to abstain from social relationships with persons who are likely to be litigants or witnesses in their court or with their attorneys. Flamm, Richard, *Judicial Disqualification*, Little Brown & Company, (1996), § 8.11. This is particularly true in small jurisdictions. *Id.* See also *CM & M Group, Inc. v. Carroll*, 453 A. 2d 788 (Del. 1982)(some social contact between judges and members of the bar who are then litigating matters before them is almost inevitable, especially in small jurisdictions).

³ See e.g. *Kansas Advisory Opinion JE 7*, Sept. 11, 1984 noting that an award given under circumstances which tend to create the impression that the judge is committed to a particular legal philosophy in accordance with that of the special interest group violates Canon 2.

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