

**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
The Hon. Robert B. Coonin
The Hon. Donald F. Parsons, Jr.

November 1, 2004

The Honorable

**Re: Amended Opinion from the Judicial Ethics Advisory
Committee: May you hire your brother's "niece-in-law" as
your judicial law clerk?**

Dear _____ :

You have requested an advisory opinion from the Judicial Ethics Advisory Committee (the "Committee") on whether you may hire the daughter of your sister-in-law's brother, i.e., your brother's "niece-in-law," as your judicial law clerk for the 2005-06 term. You have advised the Committee that your decision to hire this candidate is based completely upon her merit. She is a Phi Beta Kappa graduate of Skidmore College and is currently attending Duke University School of Law where she is a member of the Duke Law Journal and maintains a 3.5 grade-point average. She worked as a summer associate at Sullivan and Cromwell in New York City this past summer and is currently studying law in Spain.

The Committee's Advice

The Committee believes that you may hire your brother's "niece-in-law"

without offending any Canon of Judicial Conduct.

The Applicable Canon of Judicial Conduct

Canon 3 B(4) of the Delaware Judges' Code of Conduct provides:

“A judge should not make unnecessary appointments. A judge should exercise the power of appointment only on the basis of merit, avoiding nepotism and favoritism.”

The comment to this Canon notes that “appointees of the judge include officials such as . . . clerks, secretaries and bailiffs.”

Analysis

In your letter, you were kind enough to include an excerpt of a publication from the American Judicature Society in which the opinions of several judicial ethics advisory committees addressing the so-called “anti-nepotism provision” of the Canons are discussed. Several of the excerpted opinions in that article support the Committee’s conclusion here. See *e.g. Alabama Advisory Opinion 86-256* (a judge may appoint the judge’s second cousin, who is highly competent and qualified, as the judge’s secretary); *Alabama Advisory Opinion 94-513* (a judge may use the judge’s first cousin as a court reporter on a temporary or case-by-case basis); *Arkansas Advisory Opinion 99-5* (a judge may consider the spouse of the judge’s first cousin for appointment as court clerk); *Florida Advisory Opinion 98-4* (a judge may employ his “niece-in-law” as a judicial assistant); and *Louisiana Advisory Opinion 129* (1996) (a judge may employ the judge’s spouse’s brother’s daughter in the court in which the judge serves).

Of particular note is the Arkansas Committee’s opinion at 91-4, where the Committee noted several factors to guide the judge in determining whether the decision to hire a relative would violate the anti-nepotism provision of the Canons:

1. Whether the relative is objectively qualified for the position;
2. The degree, extent or depth of the relationship of the prospective

- employee to the judge;
3. Whether the position is a deputy position;
 4. Whether the appointment is on a volunteer . . . basis for no perceived present or future, direct or indirect financial benefit to the relative or to the judge;
 5. Whether the position is a relatively lucrative, full-time, or permanent position, or a temporary or part-time position; and
 6. The degree of day-to-day supervision and contact the judge would have with the relative.

With respect to the second of these factors -- the degree, extent or depth of the relationship of the prospective employee to the judge -- the Committee believes, as a rule of thumb, that the judge should avoid hiring a relative , [] or the spouse of a relative, within the third degree of consanguinity, to the judge or the judge's spouse.

See South Carolina Advisory Opinion 1-1980 (deciding the nepotism issue on the basis of the degree of consanguinity or affinity). *Cf. Delaware Judges' Code of Judicial Conduct, Canon 3(c)(1)(d)* ("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 the judge or the judge's spouse, or a person within the third degree of relation to either of them, or the spouse of such person, is a party to the proceeding --- [or] acting as a lawyer in the proceeding."). This proscription would apply in most instances even if the relative was objectively qualified for the position.

In this case, your relationship with your brother's "niece-in-law" falls well outside of the third degree of consanguinity. Moreover, you have not maintained a close social relationship with this young woman or with her immediate family.

As to the first factor noted above, it is clear by any measure of achievement that this young woman is well qualified on the merits to serve as your law clerk. She has distinguished herself academically both at college and law school. Moreover,

she has obtained substantive work experience at a top-tier New York law firm. It is difficult to imagine how anyone reasonably could question her qualifications for the job.

Given the degree of familial separation between you and the law clerk you propose to hire, and the objectively strong qualifications she brings to the job, the Committee is satisfied that factors as 3-6 set forth in the *Arkansas Advisory Committee* Opinion should be afforded little weight in this case. The fact of compensation and degree of judicial supervision may be more relevant factors in those cases where the applicant is closer in relation to the judge or less qualified for the position.

Conclusion

The Committee concludes that you would not violate the Delaware Judge's Code of Judicial Conduct by hiring your brother's "niece-in-law" as your judicial law clerk.

For the Committee:

Joseph R. Slights, III
Judicial Ethics Advisory Committee

cc: Members of the Judicial Ethics Advisory Committee
The Honorable Mardi F. Pyott, Vice Chair
The Honorable Kenneth S. Clark, Jr., Secretary
The Honorable James T. Vaughn, Jr.
The Honorable Sheila G. Blakely
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