

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

The Hon. Stephen P. Lamb, Chair
The Hon. Barbara D. Crowell, Vice Chair
The Hon. Mardi F. Pyott, Secretary
The Hon. James T. Vaughn, Jr.
The Hon. Kenneth S. Clark, Jr.
The Hon. Sheila G. Blakely
The Hon. Joseph R. Slights, III

September 8, 2004

The Honorable

JEAC 2004 -3

***RE: Opinion of the Judicial Ethics Advisory Committee
Whether the prospective disqualification of an Associate Judge from
cases involving the parent of his Judicial Secretary will lead to the
disqualification of other Judges of the court in those matters and
whether the employment of this Judicial Secretary creates a conflict
or the appearance of impropriety under Canon 3 of the Delaware
Judges' Code of Judicial Conduct.***

Dear _____ :

You have asked for an advisory opinion from the Judicial Ethics Advisory Committee ("JEAC") on an issue bearing on the administration of your court. In your letter requesting the opinion, you advise the JEAC as follows: An Associate Judge of the Court of Common Pleas has informed you that he has made arrangements to hire, as his Judicial Secretary, a law student whose father is

an active practitioner in your court who frequently appears in defense of DUI cases and other criminal matters. The Judge further advised, in his letter to you, that he will disqualify himself from any cases involving the father or his law firm.¹ You have asked whether, under Canon 3 of the Delaware Judge's Code of Judicial Conduct, the Judge's decision to disqualify himself prospectively from all cases involving the father or his firm will lead to the disqualification of the other Judges of the Court in the same matters and whether the employment of the son in the Court "create[s] a conflict or the appearance of impropriety for the Court."

For the reasons explained hereinafter, it is the opinion of the JEAC that, assuming adequate measures are taken to insulate the son from contact or involvement in cases in which his father or his father's law firm are involved, the other Judges of the court will not be disqualified from involvement in those matters. Moreover, we believe that, through the establishment of and adherence to such measures, the court, as a whole can satisfactorily dispel any appearance of impropriety.

The Committee has grave reservations about the Associate Judge's decision to hire this man as his Judicial Secretary if it will result in his disqualification in a

¹ In later discussions with you and the Associate Judge in question, we have learned that the Associate Judge is reconsidering the need to disqualify himself in all of the matters involving this practitioner. We also learned that the law student whom he plans to hire is emancipated from his parents and has lived apart for two years.

large number of cases. To do so would appear to be at odds with the Judge's fundamental duty to hear and decide matters assigned to him (Canon 3A(2)) and to manage his activities and affairs to minimize the risk of conflict with his judicial duties (Canon 5). Nevertheless, the Associate Judge has not sought an advisory opinion from the JEAC in connection with that hiring decision. Thus, we express no view on the subject.

The Delaware Judge's Code of Judicial Conduct does not expressly address itself to the employment by the courts of close relatives of Delaware practitioners. There is also no tacit prohibition on the practice of hiring children of practitioners to work in the courts. For example, from time to time, judges hire daughters or sons of Delaware lawyers to serve as law clerks. To our knowledge, where, during the course of such a clerkship, the parent of the law clerk becomes involved in a matter pending before the judge, the usual practice is to isolate the clerk from any involvement in the matter. By doing so, the judge ordinarily avoids the necessity of disqualifying himself or herself from matters in which a law clerk's parent is involved, unless some other basis for disqualification exists. In the absence of other facts that might give rise to a specified basis for disqualification, such as those found in Canon 3C(1)(a)-(e), the relevant ethical guidance is found in the general statement in Canon 3C(1) that "[a] judge should disqualify himself or

herself in a proceeding in which the judge's impartiality might reasonably be questioned." In most cases, so long as a judge acts appropriately to isolate his or her law clerk from involvement in matters in which the clerk's parent is involved as a lawyer, we do not view it as likely that a judge's "impartiality might reasonably be questioned." After all, a judge is duty bound to perform the duties of office impartially and diligently and should not "allow family, social, or other relationships to influence judicial conduct or judgment." *See* Canon 2B.

Moreover, even where there is reason to believe that Canon 3C(1)'s "might reasonably be questioned" test is met, disqualification on that basis is subject to the "Remittal of Disqualification" procedure specified in Canon 3D.

In this case, the position at issue is that of a Judicial Secretary, not a law clerk. Nevertheless, if the Judicial Secretary in question is adequately walled off from involvement with his father's cases being handled by other judges, we do not believe that his mere presence in chambers will require the disqualification of any of the other judges of the court. They are duty bound to "hear and decide matters assigned, unless disqualified" (Canon 3A(2)), and to perform those duties impartially and diligently (Canon 3). Again, unless some other reason for disqualification exists, the fact that the son of an attorney appearing in a matter is employed as a Judicial Secretary by another judge on the court should not lead to

disqualification under Canon 3C. Moreover, while the Committee appreciates the administrative disruption and inconvenience that will likely be caused by this hiring decision, we do not believe that the employment of the Judicial Secretary need cause a conflict for the Court as a whole or create an appearance of impropriety.

You have not asked us to comment on any specific administrative protocols for addressing the issues presented. Thus, we express no view on the ethical propriety of any steps the court may be planning to manage the issues of conflict presented.

For the Committee,

Stephen P. Lamb, Vice Chancellor

Cc: The Honorable Jack B. Jacobs, Liaison to the Committee
Members of the Judicial Ethics Advisory Committee
The Honorable Stephen P. Lamb, Chair
The Honorable Sheila G. Blakely
The Honorable Kenneth S. Clark, Jr.
The Honorable Barbara D. Crowell
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