



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2009-04

March 31, 2009

QUESTION:

May a judge preside over matters involving an attorney, while the judge's spouse is an employee of a title insurance agency owned by said attorney?

COMMISSION CONCLUSION:

The Judicial Standards Commission concluded that, in every matter in which the attorney appears before the judge, the judge should either disqualify, or disclose, on the record and in open court, the employment relationship between the judge's spouse and the attorney, and give the parties an opportunity to move for the judge's disqualification. Should any party move for the judge's disqualification, the judge should grant the motion. If all parties agree to waive the potential basis for the judge's disqualification, then the judge may preside. The remittal of disqualification procedures of Canon 3D of the Code of Judicial Conduct should be followed.

DISCUSSION:

Canon 3C(1) of the Code reads, *inter alia*, "[O]n motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned ...". Clearly, one could reasonably question the impartiality of a judge when a member of the judge's family is in an employee/employer relationship with an attorney, and said attorney appears in a contested matter before the judge.

Although such a situation reasonably calls the judge's impartiality into question, all parties and their counsel may waive the basis for the judge's potential disqualification, and the judge may preside. Canon 3D of the Code reads:

"Nothing in this Canon shall preclude a judge from disqualifying himself/herself from participating in any proceeding upon his the judge's own initiative. Also, a judge potentially disqualified by the terms of Canon 3C may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's potential disqualification. If, based on such disclosure, the parties and lawyers, on behalf of their clients and independently of the judge's participation, all agree in writing that the judge's basis for potential disqualification is immaterial or insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all lawyers, shall be incorporated in the record of the proceeding. For purposes of this section, pro se parties shall be considered lawyers."

It should be noted in this situation, the title insurance agency was a small business. But for the efforts

of the attorney, the agency and the accompanying employment opportunity would not exist. The judge's spouse and the attorney frequently interacted while conducting the business of the title insurance agency.

References:

North Carolina Code of Judicial Conduct

Canon 3C(1)

Canon 3D