



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2015-20 (Emergency Staff Opinion issued November 20, 2015)

Disclosure/Disqualification; Family

Rules 1.2, 1.3, 2.4 & 2.11

Issue: A Judicial Official's spouse is a partner in a mid-sized law firm. That firm has filed a firm appearance in a case and has a fee-splitting agreement with a second law firm with respect to that case. The Judicial Official does not know the specifics of the fee-splitting arrangement between the spouse's law firm and the second law firm.

Based upon the above, the Judicial Official inquired whether (1) he or she has a duty to recuse him or herself or to disclose the existence of the fee-splitting arrangement when the second firm appears in an unrelated matter before the Judicial Official, and (2) if so, do the same requirements apply if the Judicial Official limits his or her role to conducting pretrials, handling continuance requests and assigning the cases to the trial judge?

Relevant Code Provisions: Rule 1.2 states that a judge shall act at all times "in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

Rule 1.3 states that a judge "shall not use or attempt to use the prestige of judicial office to advance the personal or economic interests of the judge or others or to allow others to do so."

Rule 2.4 states, in relevant part, that "(b) A judge shall not permit family, social,

political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment. (c) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge's judicial conduct or judgment."

Rule 2.11(a) states, in relevant part, as follows:

The judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer ...
- (2) The judge knows that the judge, the judge's spouse ... is (A) a party to the proceeding ...; (B) acting as a lawyer in the proceeding; (C) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or (D) likely to be a material witness in the proceeding.
- (3) The judge knows that he or she ... or the judge's spouse ... has an economic interest in the subject matter in controversy or in a party to the proceeding.

Comment (4) to Rule 2.11 states as follows:

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under subsection (a) or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under subsection (a) (2) (C), the judge's disqualification is required.

Response: This inquiry was circulated to the Committee members and their input was solicited and received. Based upon the fact that the fee-splitting arrangement between two law firms is only in one case, it does not give rise to a reasonable basis to question a judge's impartiality when the firm that has the fee-splitting arrangement with the judge's spouse's firm appears before the judge in unrelated matters. Unless the inquiring Judicial Official has a personal bias (favorable or unfavorable) about the second firm, in which case the Judicial Official should recuse him or herself and may not seek remittal of the disqualification, none of the potentially relevant specific circumstances requiring disqualification are applicable to the facts presented. This is not a situation where the Judicial Official's relative or relative's firm will be appearing as counsel in a case before the Judicial Official. Furthermore, the Judicial Official's relative has no interest in the proceeding and will not be affected by the proceeding.

Since, in accordance with Comment (4) the Judicial Official is not disqualified if the Judicial Official's spouse is affiliated with a law firm provided (1) the judge's impartiality might not be reasonably questioned, and (2) the spouse does not have an interest in the law firm that could be substantially affected by the proceeding, a fortiori the Judicial Official is not disqualified from presiding over cases involving a law firm in which the Judicial Official's spouse's only "affiliation" is that their respective law firms have a case in common for which they have a fee-splitting arrangement.

Because the Judicial Official does not have a duty to recuse or disclose the fact of the fee-splitting agreement for a single case when the second firm appears unless the Judicial Official has a personal bias or prejudice involving that firm, the Judicial Official is not limited in the functions that he or she may perform with respect to that firm's cases which come before the Judicial Official.