

Opinions from the Advisory Committee on Judicial Ethics

The advisory Committee on Judicial Ethics (www.nycourts.gov/ip/acje) responds to written inquiries from New York State's full- and part-time judges, candidates for elective judicial office, and quasi-judicial officials such as support magistrates, court attorney-referees, and judicial hearing officers. The committee's opinions interpret the Rules Governing Judicial Conduct (22 NYCRR Part 100), the Code of Judicial Conduct and Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36). Justice George D. Marlow chairs the committee of 26 judges, and Maryrita Dobiela, Esq. is its Chief Counsel.

Opinion 08-91

June 6, 2008

Digest: A judge is not disqualified when attorneys, with whom the judge's personal attorney plans to share office space and clerical staff in exchange for a fixed percentage of the fees he/she charges, appear in the judge's court.

Rules: 22 NYCRR 100.2; 100.2(a); 100.3(E)(1); 100.3(F); Opinions 06-22, 99-146 (Vol. XVIII); 95-35 (Vol. XIII).

Opinion:

A judge's personal attorney, who has been a solo practitioner, plans to share office space and clerical staff with two other attorneys. The judge's personal attorney will not be a partner with, associate of, or "of counsel" to the other attorneys. Rather, in exchange for office space and clerical services, the judge's personal attorney will pay the other attorneys a fixed percentage of the fees he/she charges. The judge asks if he/she is disqualified from presiding when either of the two attorneys, who share office space and clerical staff with his/her personal attorney, appear in his/her court.

Pursuant to the rules Governing Judicial Conduct, a judge must avoid impropriety and the appearance of impropriety in all of the judge's activities (see 22 NYCRR 100.2), and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (see 22 NYCRR 100.2[a]). A judge, therefore, must disqualify him/her-self in any proceeding in which the judge's impartiality might reasonably be questioned (22 NYCRR 100.3[E][1]).

In several prior opinions, this Committee has considered whether a judge is disqualified from presiding in cases when an attorney who appears in the judge's court is associated in some way with another attorney who represents or has represented the judge or who is related to the judge. In Opinion 95-35 (Vol. XIII), the Committee advised that a judge is disqualified in cases involving appearances by a law firm, where the judge's lawyer/spouse has a continuing relationship with the law firm, evidenced by shared letterhead or other indicia, as opposed to a mere retainer interest in occasional, separate, discrete cases. In Opinion 99-146 (XVIII), however, the Committee advised that an appellate judge is not

disqualified when a law firm that has employed the judge's spouse on an occasional, part-time, per diem basis, appears in the judge's court. And, in Opinion 06-22, the Committee advised that where a judge's former campaign manager and personal attorney is "counsel" to a law firm, whether the judge is disqualified from presiding when an attorney from the law firm appears in the judge's court depends on the nature of the "counsel" relationship. If the former campaign manager and personal attorney has a continuing relationship with the firm, evidenced by shared letterhead or other such indicia, the judge is disqualified when other members of the firm appear before him/her, subject to remittal (see 22 NYCRR 100.3[F]; Opinion 06-22).

The same analysis applies to the present inquiry as well. In the Committee's view, the space and staff sharing arrangement between the judge's personal attorney and two other attorneys is not in the nature of a continuing relationship between an attorney and a law firm that would warrant the judge's disqualification. Although the judge's personal attorney will pay a percentage of his/her fees to the other attorneys, such payment is in the nature of rent and does not evidence a financial interest in the other attorneys' practice. The inquiring judge's impartiality cannot, therefore, be reasonably questioned in these circumstances, and he/she is not disqualified so long as he/she can remain impartial when the other attorneys appear in his/her court.