

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 08-134

September 11, 2008

Digest: a judge must disclose that his/her secretary's spouse is currently represented by a law firm when that firm or any firm member appears in the judge's court, and must disclose and insulate the secretary from any such cases. If the judge can be impartial, but a party objects, the judge has the discretion to exercise recusal or to continue to preside.

Rules: 22 NYCRR 100.2; 100.2(A); 100.2(B); 100.3(E)(1); Opinions 05-151; 05-49.

Opinion:

A judge's secretary's spouse is the plaintiff in a lawsuit. The law firm representing him/her actively engages in litigation, and some of its cases are pending in the judge's court. The judge asks whether he/she is disqualified from presiding in cases involving the attorney or the law firm, or whether he/she must disclose that the law firm represents his/her secretary's spouse when any member of the law firm appears before him/her.

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]). In addition, a judge shall not allow his/her relationships to influence his/her judicial conduct or judgment (*see* 22 NYCRR 100.2[B]), and must disqualify him/herself in any case in which his/her impartiality might reasonably be questioned (*see* 22 NYCRR 100.3[E][1]).

In Opinion 05-151, where the judge's secretary's spouse is an attorney who practices in the judge's court, the Committee advised the judge to disclose the relationship and offer to recuse, subject to remittal, in any case in which the attorney appears and must completely insulate the secretary from any such cases. Similarly, where a judge's secretary was involved in a personal relationship with an attorney, the Committee advised that the judge may preside in cases where the attorney or members of the attorney's firm appear only if the judge discloses the relationship, and the parties and their attorneys consent to the

judge's participation (*see* Opinion 05-49). In addition, the judge must insulate the secretary from any such cases (*see id.*).

In the present inquiry, it is the secretary's spouse who has a lawyer-client relationship with an attorney who appears in the judge's court. And, the nature of the relationship is thus professional and limited to the duration of a lawsuit, as opposed to personal, on-going and indefinite in duration. In the Committee's view, therefore, if the judge can be impartial, he/she is not disqualified from presiding in cases where the attorney or a member of the attorney's law firm appears. The judge should, however, insulate his/her secretary from any cases involving any member of the law firm and disclose to all parties and their attorneys that the law firm currently represents the secretary's spouse and that the secretary is insulated from the case. In the event that any party objects, but the judge believes he/she can be impartial and is willing to preside, the judge has the discretion to exercise recusal or to continue to preside.