



Nonetheless, a spouse's business activities have ethical implications for the judge. Specifically, Rule 2.11(B) requires a judge to "make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household." And Rule 2.4(B) states that "[a] judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment." Further, Rule 2.11(A) requires a judge "to disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned," including when a judge's spouse "has more than a de minimis interest that could be substantially affected by the proceeding," *see Rule 2.11(A)(2)(c)*, or when the judge's spouse "has an economic interest in the subject matter in controversy or in a party to the proceeding," *see Rule 2.11(A)(3)*. Finally, while Rule 3.13(B)(8) permits a judge to accept "gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse ... that incidentally benefit the judge," the Commentary to this rule makes clear that a judge may not accept anything of value "without paying fair market value" and cautions that a gift or benefit to a judge's family member may be viewed as an attempt to influence the judge indirectly and thus directs a judge to remind family members of the Code's restrictions on the judge's conduct. *See Comments [1] and [4] to Rule 3.13.*

The judge's inquiries to the Committee raise the question of whether the business relationships of the judge's spouse

would require the judge's disqualification from matters involving the spouse's clients. In the first scenario, the judge's spouse proposes to enter into a contractual relationship with a third-party who leases office space to State agencies that appear before the judge. The Committee addressed an analogous question in JE13-002 in which the judge himself leased office space to the State of Nevada, which in turn used the space to house the State Public Defender's Office. Although the attorney occupants of the building appeared before the judge, the Committee concluded that the NCJC did not require the judge's disqualification "so long as there is no direct landlord/tenant relationship between the judge and the lawyer tenants." *See Advisory Opinion JE13-002.*

Similarly in the present circumstances, the judge's spouse would have no direct relationship with the State agencies who appear before the judge. Rather, the State agencies are the tenants of a private landlord, with the cleaning included in the rental price. Because any cleaning contract would be between the judge's spouse and the private landlord, the State agencies appearing before the judge would pay no income to the spouse and thus would be a step removed from the spouse's business relationship with the landlord. The Committee concludes that in this scenario the judge's impartiality could not reasonably be questioned and the judge would not be disqualified under Rule 2.11(A) from hearing matters involving the State agencies who are tenants of the building. The Committee advises, however, that disclosure might be

required under certain circumstances. *See Comment [5] to Rule 2.11.*

In contrast, the judge's second inquiry involves a direct contract for cleaning services between the judge's spouse and an attorney who appears before the judge. This Committee addressed a comparable situation in JE08-014, in which the judge leased a commercial building to attorneys who appeared before him, and concluded that Canon 3(E) (now Rule 2.11(A)) precluded the judge from hearing matters brought by his tenants because he had a "personal economic interest" in the financial stability of attorneys who rent from him. *See Advisory Opinion JE08-014.*

Under Rule 2.11(A)(3), a judge is likewise disqualified from hearing matters in which the judge's spouse "has an economic interest in the subject matter in controversy or in a party to the proceeding." Moreover, under Rule 2.11(A)(2)(c), a judge is disqualified from hearing a matter if the judge's spouse "has more than a de minimis interest that could be substantially affected by the proceeding."

Although the Committee is not privy to the specifics of the proposed contract between the attorney and the judge's spouse, it is clear that the judge's spouse would derive income directly from an attorney who appears before the judge. Without more facts, the Committee is unable to determine whether the spouse's income from the cleaning contract would amount to a disqualifying economic interest. However, the Committee concludes that at the very least the spouse's business relationship does create for the judge an appearance of impropriety under Rule 1.2 and that this

alone warrants the judge's disqualification. *See Rule 1.2, Comment [5]* ("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.").

The Committee further advises that Rule 2.11(C) permits a judge subject to disqualification on these grounds to disclose on the record the basis for the judge's disqualification and to ask the parties and their lawyers to consider whether to waive the disqualification. In making such a disclosure, the judge must follow the procedure set forth in this rule.

In closing, the Committee notes that the NCJC also imposes limitations on a judge's business activities. Although the Committee finds no fault with the judge's proposed involvement with his or her spouse's business, we emphasize that the judge's conduct must be guided by Rule 1.3 (avoiding abuse of the prestige of judicial office), Rule 3.10 (practice of law), Rule 3.11(B)(1) (participation in family business), Rule 3.11(C) (limitations on financial activities), and Rule 3.12 (compensation for extrajudicial activities).

### **CONCLUSION**

Although the NCJC does not govern the conduct of a judge's spouse, the spouse's business activities involving those who appear before the judge may require the judge's disqualification from hearing certain matters under Rule 2.11. The judge is obligated to disqualify when the judge's

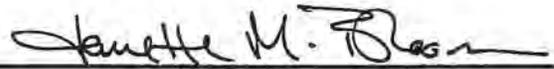
spouse directly contracts with an attorney who appears before the judge. However, the judge may preside over matters involving State agencies leasing office space from a third party who contracts for cleaning services from the judge's spouse.

**REFERENCES**

Nev. Code Jud. Conduct, Application Section I; Rule 1.2; Rule 1.3; Rule 2.4(B); Rule 2.11(A); Rule 2.11(A)(2)(c); Rule 2.11(A)(3); Rule 2.11(B); Rule 2.11(C); Rule 3.10; Rule 3.11(B)(1); Rule 3.11(C); Rule 3.12; Rule 3.13(B)(8); Comment [5] to Rule 1.2; Comment [5] to Rule 2.11; Comments [1] and [4] to Rule 3.13; Nevada Standing Committee on Judicial Ethics Opinions JE 08-014, JE10-009, JE13-002; Rule 5

Governing the Standing Committee On Judicial Ethics,;

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