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STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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CLERK OF SUPREME COURT
BY _____
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OPINION: JE05-002

PROPRIETY OF JUDGE HIRING A
RELATIVE AS A LAW CLERK.

employ any relative who is within the "third degree of consanguinity of affinity." Here the proposed law clerk is within the degree of relationship prohibited by the statute.

Issue

May a judge hire a relative as a law clerk?

In *Fine v. Nevada Commission on Judicial Discipline*, 116 Nev. 1001, 13 P.3d 400 (2000), one of the issues was whether the judge in that case had violated Canon 3C(4) by appointing her first cousin as a mediator in a matter before her. The court in *Fine* relied upon the definition of "nepotism" in Black's Law Dictionary in concluding that the appointment of the first cousin was a violation of the Canon. *Fine*, 116 Nev. at 1017-18. In applicable part, Black's defines "nepotism" as a "[b]estowal of patronage by public officers in appointing others to positions by reason of blood or marital relationship to appointing authority." *Id.* At 1017. The *Fine* decision also relied upon Black's Law Dictionary for the definition of "favoritism." Black's defines favoritism as "[i]nvidious preference and selection based on friendship and factors other than merit." *Id.* The Black's definition of "nepotism" and the *Fine* court's use of it are not based upon the degree of relationship, but rather on the mere fact that there is a relationship. Similarly, the definition of "favoritism" turns upon preference based upon factors other than merit.

Answer: No.

Facts

The inquiry asks whether the judge may hire a relative who is within the third degree of consanguinity as the judge's law clerk.

Discussion

In applicable part, Canon 3C(4) states that a judge, in performing administrative responsibilities, "shall exercise the power of appointment impartially and on the basis of merit" and "shall avoid nepotism and favoritism." In addition, Canon 2 requires a judge to avoid "the appearance of impropriety in all of the judge's activities." Canon 2A provides that a judge shall "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Although Canon 3C(4) does not define "nepotism" or "favoritism," a Nevada statute and Supreme Court decision provide guidance. Section 281.210 of the Nevada Revised Statutes makes it unlawful for a person acting as a state or county officer to

Based upon the provisions of N.R.S. §281.210 and the decision in *Fine*, the Committee concludes that employment by a judge of a relative within the third degree of

FEB 11 2005

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consanguinity would be improper as "nepotism" and "favoritism" within the proscription of Canon 3C(4).

Fine also involved whether the appointment of a first cousin as a mediator was a violation of Canon 2 and Canon 2A. With little discussion, the court concluded that under the facts of that case, it was. It is the view of the Committee that a judge's employment of a relative creates an appearance of impropriety which undermines public confidence in the integrity of the judiciary. No matter how well qualified or competent the employee may be, the family relationship gives the appearance that the selection was made on factors other than merit.

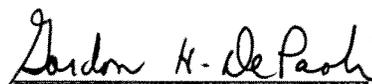
Conclusion

Canon 3C(4) requires a judge to make appointments based upon merit and to avoid nepotism and favoritism. Employing a relative who is within the third degree of consanguinity as a law clerk would violate this Canon. In addition, such employment gives the appearance of impropriety, which undermines public confidence in the judiciary in violation of Canon 2 and Canon 2A.

References

Nevada Code of Judicial Conduct, Canon 3C(4); Canon 2; Canon 2A; N.R.S. 281.210; *Fine v. Nevada Commission on Judicial Discipline*, 116 Nev. 1001, 13 P.3d 400 (2000); Black's Law Dictionary (6th ed. 1990).

not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion.



GORDON H. DePAOLI

Committee Chairman

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