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STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY _____
CHIEF DEPUTY CLERK

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OPINION: JE05-002

PROPRIETY OF JUDGE HIRING A
RELATIVE AS A LAW CLERK.

Issue

May a judge hire a relative as a law
clerk?

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

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.

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.

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

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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.

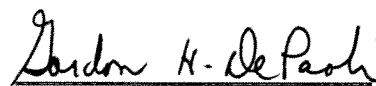
Conclusion

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).

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