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STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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OPINION: JE07-004

DISCUSSION

PROPRIETY OF A JUDGE HEARING CRIMINAL OR CIVIL CASES WHICH INVOLVE THE FIRM IN WHICH THE JUDGE'S CHILD IS AN ASSOCIATE ATTORNEY.

The Canon of Judicial Conduct 3E, "Disqualification", subsection (1)(c) instructs a judge to disqualify himself or herself when:

ISSUE

May a judge preside over criminal or civil matters when one party is represented by an attorney from the local law firm where a child of the judge is working as an attorney?

the judge knows that...the judge's...child...has an economic interest in...a party to the proceeding or has other more than de minimis interest that could be substantially affected by the proceeding;

ANSWER

Under certain limited circumstances, yes.

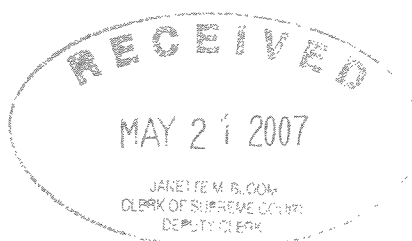
Plus, Canon 3E(1)(d)(iii) requires disqualification when a judge knows that a relative has more than a de minimis interest in the outcome of the proceeding.

FACTS

This written request from a justice of the peace asks if he/she is precluded from hearing contested criminal and civil cases presented before his/her court by an attorney from a law firm where his/her child works as an associate. The judge asked about the propriety of colleagues of his/her child appearing before him/her. He/she knows he/she is required to disqualify if his/her child appeared in his/her court on behalf of a party. The law firm has five (5) partners.

Weighing the concern that a judge preside over his or her calendar whenever appropriate against the concerns raised by the Code of Judicial Conduct, the Committee looked to the Commentary of E(1)(d), which states the judge may be required to disqualify himself or herself if the judge's impartiality might reasonably be questioned under Section 3E(1) or in the event the relative known to have an interest in the law firm could be "substantially affected by the outcome of the proceeding."

Applying this analysis, the Committee decided the better practice would be for a judge in such a



circumstance to voluntarily disqualify, in criminal and civil cases. If a recusal process is available, the judge can rely on it. See, *Millen v District Court*, 122 Nev. Adv. Op. No. 105 (2006). In the event the judge does not voluntarily remove himself or herself from the case, he or she must look first to the de minimis standard defined in the Code as “..an insignificant interest that could not raise reasonable question as to a judge’s impartiality.” While this standard needs to be applied on a case by case basis, the Committee is concerned that the focus not be exclusively on the potential monetary benefit to the relative’s firm. In evaluating this issue, the judge must look at the totality of the circumstances, including the possibility that future litigants may be drawn to the firm if they believe the judge would sit on cases involving his/her child’s place of employment.

If the judge decides to move forward even after evaluating any potential benefit to the law firm, there is clearly an obligation to disclose his/her child’s employment at the beginning of any proceeding involving the firm in question. It is then left to the attorneys involved to make the decision as to whether to continue or to ask for reassignment to another judge in the jurisdiction.

CONCLUSION


While the Committee supports the obligation of judges to preside when appropriate, the Code of Judicial Conduct, Canon 3E(1)(c) and (d)(iii) require voluntary disqualification when a son or daughter of the judge has more than a de minimis interest in the matter at bar. In this case, the judge’s child is a new associate at a law firm which regularly appears in front of this justice of the peace on criminal and civil matters. The judge

here should voluntarily remove himself/herself from any such matters, relying on the court administration to reassign the cases. In the event the judge decides to continue, he/she must first look at the Canon 3E and decide whether the interest of his/her child’s firm and his/her child is of a significant enough level that it could raise questions of his/her impartiality. If the judge decides the interest is de minimus, he/she still has an obligation to disclose the interest to the parties and their attorneys and allow the attorneys to move for reassignment to another jurist.

REFERENCES

Nevada Code of Judicial Conduct, Canon 3E (1)(c) and (d)(iii) and commentary.

This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is 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.


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