

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 12-915

JUDGE'S SPOUSE AS JUDGE'S SUBSTITUTE COURT REPORTER

ISSUE

In a one-county circuit served by two circuit judges and two district judges, may a circuit judge occasionally permit his or her spouse, the other circuit judge's official court reporter, to serve as the inquiring judge's substitute court reporter? **Answer:** No.

FACTS

The inquiring judge's circuit consists of one county, which is served by one other circuit judge and two district judges, for a total of four judges. The district judges are assigned, as special circuit court judges, fifty percent of the domestic-relations cases and also the felony pleas.

DISCUSSION

Section 12-17-270, Code of Alabama (1975), provides the following:

Each of the judges of the circuit courts . . . shall appoint a competent person to perform the duties of official court reporter of the courts in the circuit over which said judge presides. No two or more judges shall appoint the same court reporter. The official court reporter shall be an officer of the court . . . and shall hold office at the pleasure of the judge, who shall have power to remove said official reporter at any time. The court reporter shall not be related to the trial judge within the fourth degree of consanguinity or affinity, and any appointment of a court reporter so related to the trial judge within the prohibited degree shall be void. The provisions of this section shall not apply to circuits which consist of only one county and have three or more than three judges.^[1]

(Emphasis added.) *See* Advisory Opinions 03-810 (a judge may not retain his spouse as his official court reporter after they marry because, even though her employment after they marry would not constitute an "appointment," § 12-17-270 explicitly proscribes service by the judge's wife as his court reporter); 94-513 (without discussing the application of any canon, the Commission relied on § 12-17-270's one-county-three-judge exception in approving two circuit judges' occasional use of the third circuit judge's official court reporter even though the court reporter is related to the two judges); 88-328 (finding the particular relationship between the judge and the judge's substitute court reporter is not within the provisions of § 12-17-270).

¹The question whether district judges may be included in the "judges" necessary to trigger § 12-17-270's exception is more properly addressed to the state attorney general. Advisory Opinion 81-124. *See also* Advisory Opinion 88-328.

Even if service by the judge's spouse as the judge's court reporter would be permissible under § 12-17-270 and despite the Commission's prior opinions noted above, the ethical implications of such service, even if only occasionally, raise significant concern. *See* Florida Advisory Opinion 2001-08 (it would be inappropriate for the judge's spouse, a court reporter and owner of a court-reporting company, to personally report or work on any case assigned to the judge). *Cf.* Canon 3B(4) (a judge should avoid nepotism in exercising his or her power of appointment).

A judge has a duty to eliminate or avoid any conflict of interest in performing his or her judicial duties. Canons 1, 2, 3C(1). If the judge's spouse serves as the judge's court reporter, the judge could be called upon to review the validity of the spouse's work product. *See* Florida Advisory Opinion 93-10 (the judge's spouse, a free-lance court reporter, should not report trials assigned to the judge because such could raise questions of impartiality if the judge had to review the spouse's work product and the parties disagreed on the accuracy of the record). Such conflict of interest would trigger the judge's disqualification under Canon 3C(1), including Canons 3C(1)(c) and 3C(1)(d)(ii) (the judge's spouse is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding). *See* Advisory Opinion 91-421 (the professional reputation of the judge's relative is an interest that could be substantially affected). Therefore, a judge should prudently avoid any situation where his or her spouse would serve as court reporter in any proceeding assigned to that judge.

Finally, the parties cannot waive the judge's duty here. *Cf.* Canon 3B(4), Commentary ("Consent by the parties . . . does not relieve the judge of the obligation prescribed by this subsection [to avoid nepotism in the exercise of his or her appointment power].").

REFERENCES

Advisory Opinions 03-810; 94-513; 91-421; 88-328; 81-124.

Alabama Canons of Judicial Ethics, Canons 1; 2; 3B(4); 3C(1); 3C(1)(c); 3C(1)(d)(ii); Canon 3B(4), Commentary.

Ala. Code, §12-17-270 (1975).

Florida Advisory Opinions 2001-08; 93-10.
