

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: July 26, 2018

ADVISORY OPINION 18-942

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### DISQUALIFICATION: JUVENILE JUDGE'S SPOUSE ON SCHOOL BOARD

#### ISSUES

Is the juvenile judge, whose spouse is a member of the school board, disqualified from:

- a. A delinquency petition filed by an employee of a school in the district?
- b. A delinquency petition initiated by a school in the district?
- c. A case involving a student who may have or had any school disciplinary issue that is or was before the school board and those attending facts are relevant to the case?

#### FACTS

The board of education on which the judge's spouse serves exercises general supervision and administration of the public schools. The board is involved in decisions regarding a student if the recommended action is suspension or expulsion of the student or a parent disputes the discipline recommended at the school level. Just as the identity of a juvenile is confidential in the juvenile court, it is confidential in any matter before the board. Moreover, in most instances, the two proceedings are totally unrelated. However, in a rare circumstance, the judge may have public information that raises a possibility that the juvenile in the judge's court could be involved in a matter before the school board, e.g., a news report that an unnamed juvenile had been implicated in a disciplinary matter at a school in the district.

#### DISCUSSION

The following Alabama Canons of Judicial Ethics apply to the inquiring judge's questions:

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| Canon 1  | A judge should uphold the integrity and independence of the judiciary.   |
| Canon 2  | A judge should avoid impropriety and the appearance of impropriety in all his/her activities.  |
| Canon 2A | A judge should respect and comply with the law and should conduct him/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. |
| Canon 2C | A judge should not allow his/her family, social, political, or other relationships to influence his/her judicial conduct or judgment.  |
| Canon 3  | A judge should perform the duties of his office impartially and diligently.  |

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Canon 3C (1) A judge should disqualify him/herself in a proceeding in which his/her disqualification is required by law or his/her impartiality might reasonably be questioned, including but not limited to instances where:

(a) He/she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

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(c) He/she knows that . . . his/her spouse . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) He/she or his/her spouse . . . :

(i) Is named a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) Is to the judge's knowledge likely to be a material witness in the proceedings.

The judge is, of course, disqualified in any proceeding in which he/she has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts. Canon 3C(1)(a). However, the board position of the judge's spouse does not disqualify the judge from sitting in all cases in which a school, a school employee, or a school disciplinary action may be somehow relevant to the issues in the case assigned to the juvenile judge. A personal or direct involvement or interest or a personal knowledge would be required on the part of the judge or the judge's spouse for disqualification. Advisory Opinions 12-910; 99-741; 88-345. Thus, without more, the judge would not be disqualified from any case in which the delinquency petition was filed by a school employee or initiated by a school.

In regard to the inquiring judge's third scenario—a case involving a student who may have or had any school disciplinary issue that is or was before the school board—any interest, involvement, or knowledge of the judge's spouse must be determined on a case-by-case basis.

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An example of facts disqualifying a judge is presented in Nebraska Advisory Opinion 03-3. There, the Department of Health and Human Services/Office of Juvenile Services (Department) and the school system disagreed about the need for one-on-one supervision of a juvenile adjudicated for sexual penetration of a child. The juvenile judge's spouse was vice-president of the school board. The school district was not a party to the case and did not have standing to object to the case plan. In finding that the judge should recuse, the Committee explained:

The judge's spouse in this case is vice president and a member of the school board. The school board is entrusted with shepherding the operation and general welfare of the school district and its students. . . . [T]he juvenile in question has exhibited behavior in the public school system, which behavior, if allowed to go unsupervised, could result in serious consequences and in litigation by other students against the district. The judge's spouse certainly has more than a de minimis interest in preventing harmful behavior by this juvenile which could result in litigation against the district. The committee therefore believes the judge should recuse himself because of the provisions of Canon 3.

The judge should also recuse himself on the basis that if he were to remain in the case and rule against the Department, it would have the appearance of impropriety. "If disqualification is not required under any of the relatively specific provisions of Canon 3 of the Code of Judicial Conduct, it still might be required in any other instance in which a judge's impartiality might reasonably be questioned. . . . Thus where there is an appearance of partiality to a reasonable observer, disqualification is necessary. The test for an appearance of partiality is meant to be an objective one: whether an objective, disinterested observer fully informed of the relevant facts would entertain a significant doubt that the judge in question was impartial." Jeffrey M. Shaman et al., Judicial Conduct and Ethics § 4.25 (3d ed. 2000).

In this case, the objective disinterested observer is not going to know much about the actual facts of the case. That disinterested observer is only going to know the judge's spouse is on the school board and the judge ruled in favor of the school on the conflict of interest. Although the factual situation presented certainly would justify the judge's decision to maintain one-on-one coverage of this juvenile, to the objective disinterested observer, the judge's decision would have the taint of partiality to the school district. Based on the facts of this case, the Committee is of the opinion that the judge should recuse himself.

See also Advisory Opinion 05-854, advising the juvenile judge was disqualified to hear a probation violation predicated on the juvenile's school suspension where the judge's spouse was the school board's attorney and the exhibits to a motion by the juvenile included a letter

written by the judge's spouse as the attorney for the school board, discussing factual and legal positions regarding the underlying incident.

The Canons do not expressly require disclosure of interests or relationships the judge does not deem disqualifying. However, the judge should disclose on the record the fact the judge's spouse is a board member **where the delinquency petition was filed by a school employee or initiated by a school, where a school employee is a potential witness, where the inquiring judge has some indication the juvenile has been or is involved in proceedings before the school board and those actions are relevant to the case before the judge, or where the actions or the policies of the board are implicated in the case**, See Advisory Opinion 12-910; 04-845. Disclosure would prevent any appearance of impropriety in the event a party learns of the relationship after the fact. It also puts the parties on notice so they can bring to the judge's attention any additional circumstances. Relationship information may be conveniently disclosed by filing a statement with the court clerk, or the judge may give notice in open court or cause written notice to be given to the parties. (Canon 3E provides that a judge who does not deem him/herself disqualified from a proceeding may make information concerning interests or relationships available, either by filing that information in the office of the clerk of the judge's court or by causing notice to be given to the parties to the proceeding. Under Canon 3E, it is the duty of the parties to familiarize themselves with any materials available for inspection in the clerk's office.)

Because the board of education proceedings are confidential as are the juvenile court proceedings, it not advisable for the juvenile judge to sua sponte inquire of her/her spouse or the juvenile-court participants of any direct connection of school board proceedings with the juvenile case. However, if a judge knows facts or participant presents a predicate raising the raise the question of disqualification or recusal—not a mere allegation, the judge may explore the factual basis of that question with the participants of the juvenile proceedings to satisfy him/herself that he/she is not disqualified.

If the judge determines that disqualification under Canon 3C(1)(c) or (d) applies, either disqualification is subject to remittal, provided the requirements of Canon 3D are met, as follows:

D. REMITTAL OF DISQUALIFICATION. A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose in the record the basis of his disqualification. If based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the

judge is no longer disqualified, and may participate in the proceeding. The agreement signed by all parties and lawyers shall be incorporated in the record of the proceeding.

*Commentary*

*This procedure is designed to minimize the chance that a party will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.*

However, the following disqualifications are not subject to remittal: remaining in the case would have the appearance of impropriety, Canon 2; a reasonable question as to the judge's impartiality is present, Canon 3C(1); or the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts. Canon 3C(1)(a).

**REFERENCES**

Alabama Canons of Judicial Ethics, Canons 1; 2; 2A; 2C; 3; 3C; 3C(1); 3C(1)(a); 3C(1)(c); 3C(1)(d)(i), (ii), and (iii); 3D; and 3E.

Alabama Advisory Opinions 12-910; 05-854; 04-845; 99-741; and 88-345.

Nebraska Judicial Ethics Committee Advisory Opinion 03-3.

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This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 18 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043.