

ADVISORY COMMITTEE  
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 1 - 2017

RE: Propriety of a magistrate judge serving in the same county where judge's spouse is a highway patrol officer.

FACTS

A magistrate judge is married to a state highway patrol officer who works in the same county as the magistrate's court. The highway patrol officer is not a supervisor. The magistrate would not hear any cases in which the magistrate's spouse is the case agent or a witness. However, the judge inquires as to whether there is any impropriety with hearing cases involving other members of the highway patrol.

CONCLUSION

A magistrate may serve in the same county in which the magistrate's spouse is a highway patrol officer.

OPINION

This Committee has, on multiple occasions, considered a judge's service when a spouse or family member is involved in law enforcement and found that there was no violation of the Code of Judicial Conduct. See, 1-1989 (finding no ethical violation where judge is married to SLED officer); 1-1991(magistrate can preside over cases prosecuted by sheriff's department even though judge's son is sheriff); 9-1994 (no violation where magistrate is married to a sheriff's deputy); 25-1995 (no violation where magistrate is married to secretary in sheriff's department); 3-1998 (no violation of canons where judge is married to sheriff's records clerk); and 6-2005 (no violation where candidate for magistrate is married to clerk for civil department of magistrate's office). Three other opinions (12-2005, 8-2007, 1-2009) found that there would be a violation, but those

opinions all involve a spouse/ relative or employees of the spouse/relative appearing before the court as a material witness. That factual scenario is not present in this case. Thus, the Committee is of the opinion that the judge may continue to preside over tickets/matters involving the state highway patrol even though the judge is married to a member of the state highway patrol. Of course, the judge may not preside in any matter in which the judge's spouse is a witness or the case agent.

However, if a party seeks disqualification of the judge based on the judge's spousal relationship with a member of the highway patrol, the judge must consider whether presiding over the case individually involving the highway patrol would create the appearance of impropriety. If the recusals or requests for disqualification create an administrative burden such that the judge is unable to properly perform judicial duties, then the judge should no longer remain on the bench.

S/ A. Camden Lewis  
A. CAMDEN LEWIS, CHAIRMAN

S/ Jocelyn B. Cate  
JOCELYN B. CATE

S/ D. Garrison Hill  
D. GARRISON HILL

December 14, 2016