

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 2 - 2018

RE: Propriety of a magistrate holding bond hearings, signing warrants and presiding over preliminary hearings where the magistrate is dating the county sheriff.

FACTS

A county magistrate just began dating the county sheriff. The magistrate is the presiding judge over Bond Court and the magistrate's duties include: setting bonds twice a day, signing warrants, signing search warrants, and presiding over preliminary hearings. The judge inquires as to under which circumstances the judge must recuse himself/herself and/or when the judge would need to disclose the relationship.

CONCLUSION

The judge shall disqualify himself in a proceeding where he or she has a potential personal bias, such as handling any matters in which employees of the sheriff, whom the judge is dating, appear as witnesses.

OPINION

A judge must disqualify himself or herself in a proceeding where his/her impartiality might reasonably be questioned. Rule 501, SCACR, Canon 3E(1).¹ Furthermore, the judge must disqualify himself/herself if the judge has a personal bias concerning a party. Rule 501, SCACR, Canon 3E(1)(a). In 17-2002, this Committee addressed a situation in which a magistrate was dating

¹While Canon 3E provides certain situations when disqualification is required -- such as when a judge's spouse or family member is a party, lawyer, or material witness to a proceeding-- the Commentary to the rule also notes that "a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply."

a police officer who might be required to bring matters, such as arraignments, bond hearings, and warrant requests, before the magistrate when the municipal judge was unavailable. We determined that the relationship between the judge and his girlfriend could affect the outcome of the proceedings and that the magistrate should recuse himself in any matters brought before him by his girlfriend.

The Committee has also addressed, on various occasions, judges married or related to persons involved in law enforcement, with varying conclusions. See, Opinions 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);² 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); 1-2017 (magistrate could continue to preside over tickets/matters involving the state highway department, even though the judge is married to a member of the state highway patrol, provided that the judge did not preside in any matter in which the judge's spouse is a witness or the case agent).

Three other opinions found that there would be a violation. See Opinions 12-2005 (finding a part-time bond magistrate judge could not hear matters in which the employees of the judge's spouse--- the captain of the detective unit-- would regularly appear); 8-2007 (improper for spouse of full-time magistrate to accept position with sheriff's department where spouse would have to testify in magistrate's court as to authenticity of 911 tapes); 1-2009 (candidate for municipal judge should not be appointed because candidate's uncle is the chief of police, and repeated

²This opinion is addressed further in Footnote 3.

disqualification due to relationship renders candidate unable to perform the job). In those opinions, the common factor is that a spouse/relative or employees of the spouse/relative would frequently appear before the court as a material witness.

In this case, the magistrate is dating the sheriff. While it may be unlikely that the sheriff personally appears before the magistrate, the sheriff's employees will regularly appear before the magistrate for bond hearings, warrant requests, and other matters. Thus, this situation can be distinguished from Opinion 17-2002 in which the judge was dating a police officer, but not the chief of police or the sheriff (i.e., a person whose employees will regularly appear before the Court). The Committee's previous opinions finding no conflict either involved a non-supervisory law enforcement officer, no overlap in jurisdiction, or some other distinguishing factor.³ This situation presented here is more comparable to Opinions 1-2005, 8-2007, and 1-2009 in which the judge would have to frequently recuse himself or herself because the judge's spouse or his/her employees would regularly appear in the judge's court. Even if the judge and the sheriff are not

³Opinion 1-1991 was decided under a previous version of the Canons which may or may not have had the provision under current Canon 3E(1)(d)(iv) which requires disqualification where a judge's spouse or person within third degree of relationship is likely to be a material witness in a proceeding. However, because it is contrary to that Canon, and most likely the Committee would rule a different way under the current Canons, Opinion 1-1991 should be considered overruled.

married, their relationship could lead to the judge's impartiality being questioned and would require disqualification in any cases in which the sheriff and/or the sheriff's employees appeared.

S/ Letitia H. Verdin
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January 9, 2018.