ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 6 - 2018

RE: Propriety of a newly-elected circuit court judge presiding over matters in which members of the judge's former law firm appear as counsel.

FACTS

A newly-elected circuit court judge inquires about the propriety of presiding over matters in which members of the judge's former law firm appear as counsel. The judge left the firm 18 months prior to the judicial election. Almost all of the cases the judge worked on while at the firm have resolved, but there are two remaining matters now on appeal. The two cases are now being handled by other lawyers at the firm but the judge has a contingency fee interest (a percentage) in any recovery the law firm may eventually obtain. The judge presents the following questions:

1. Should the judge recuse himself or herself from all cases involving the judge's former firm and if so, how long must the judge recuse himself or herself after the cases on appeal are concluded and the judge has been paid?

2. Can the judge accept a "buyout" of the judge's interest as the judge's former law firm has proposed? Under the proposal, the law firm would pay the judge now and the judge would waive any further interest in the two cases. The payment would be less than the fair value of the judge's share to account for the uncertainty of the outcome of the cases.

3. If the judge accepts a cash payment now, how long after payment must the judge recuse himself/herself from cases involving his/her former law firm?

CONCLUSIONS

A judge should disqualify himself or herself from cases involving the judge's former firm if the judge will still potentially receive a portion of contingency fees for legal services performed before the judge left the firm and ascended to the bench.

A judge may accept a lesser amount from the judge's former firm as a buyout of the judge's interest in his or her interest in a case the judge handled prior to ascension to the bench.

A judge should not preside over cases involving the judge' former law firm if the firm began its involvement in the matter while the judge was still a member of the firm. If the matter arose after the judge's ascension to the bench, the judge may, depending on the circumstances, be able to hear the case.

OPINION

Canon 4D governs financial activities of a judge and states that a judge shall not engage in financial or business dealings that involve the in judge in "frequent transactions or continuing business relationships with those lawyers…likely to come before the court on which the judge serves." Canon 4D(1)(b). Canon 4D(4) require a judge to "divest himself or herself of investments and other financial interests that might require frequent disqualification."

This Committee has previously addressed a situation similar to the issues here. In Opinion 12-2013, we considered whether a special circuit court judge could receive payment of fees for a case initiated prior to ascension to the bench. In that matter, we found that the judge could receive a share of a contingency fee for services rendered prior to the judge's appointment. However, we noted that "until all fees are paid, the judge should not preside in cases in which the attorney with whom the judge is sharing fees, appears as counsel. Thus, it would behoove the judge to resolve

the financial issues as quickly as possible."[1] The logic of that decision applies here, and the judge should not preside over any cases involving the judge's former firm until the issue of the potential fees owed from the two remaining cases is resolved, whether by appeal, verdict, or a payout. Moreover, to avoid repeated disqualifications, the judge should resolve the financial issues as quickly as possible.

Assuming the resolution of the financial issue is quickly accomplished, we now turn to the question of whether the judge can preside over cases involving members of the judge's former firm or whether the judge must recuse himself or herself, and if so, how long the judge must recuse himself/herself from such cases. Previously, we have held that:

> [a] judge cannot hear a case in which the judge' former law firm is involved if the judge's former firm began its involvement in the matter while the judge was still a member of the firm. If the matter arose after the judge's ascension to the bench, the judge may, depending on the circumstances, be able to hear the case.

Opinion 24-2006.

We see no need to deviate from that opinion. The judge should not preside over any cases in which members of the judge's former firm appear if the matter is one that began while the judge was a member of the firm. As to cases that were initiated after the judge's departure, the judge must disqualify himself or herself if the judge's "impartiality might reasonably be questioned" (Canon 3E, SCACR). In making that determination, the judge should consider:

> How long has it been since the judge left the firm? Has the judge maintained a close relationship with the remaining members of the firm? Does the judge still have any business interests with the members of the firm? Is the judge still receiving any sums of money from the firm due to termination of the pending cases or the purchase of the judge's interest in the firm? The issue is whether these facts indicate to a person of ordinary prudence that the judge's impartiality might be questioned.

[1] In that matter, the judge and the other lawyer were not members of the same firm.

Opinion 24-2006. This Committee cannot make a specific rule as to how long a judge should disqualify himself or herself in cases involving the judge's former firm. The judge must use his or her discretion, applying the factors in Opinion 24-2006.

S/ LETITIA H. VERDIN
LETITIA H. VERDIN, CHAIR

S/ USHA JEFFERIES BRIDGES
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S/ KEITH M. BABCOCK
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March 6, 2018.