

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 6 - 2021

RE: Propriety of a Family Court Judge presiding over a matter in which the lawyer/law firm representing a party is also the owner of a building in which judge's spouse leases office space.

FACTS

A Family Court judge's spouse owns and operates a wealth and financial management planning business. The judge's spouse is sometimes hired by clients of various area attorneys, including attorneys in the firm ("Law Firm") that is the subject of the judge's inquiry. The Law Firm owns an office building and has available office space for rent on the second floor. The judge's spouse is contemplating leasing office space from the Law Firm. The arrangement would be for space only and would not include any shared staff. Separate signage would indicate the spouse's business name and location within the building. The judge inquires as to whether the judge may preside over matters in which the Law Firm appears if the judge's spouse does enter into a lease agreement.

CONCLUSION

A Family Court judge is not disqualified from presiding over a case in which one of the attorneys rents office space to judge's spouse, but the judge should disclose "on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

OPINION

According to Canon 3E., "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Canon 3E lists specific

examples of when the judge's impartiality might be questioned, such as if the judge's spouse is a party or lawyer in the proceeding; if the judge has or judge's spouse has more than a *de minimis* interest in the proceeding; if the judge has a bias concerning a party or lawyer in the proceeding; or if the judge's spouse is likely to be a material witness. Canon 3E.(1)(a)-(d). The commentary to the rule notes "[u]nder this rule, 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." The examples provided in the Rule are illustrative and not exhaustive, and a judge must consider whether there are any other factors that might cause his or her impartiality to be questioned. "A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification." Commentary to Rule 3E.

In Opinion 9-2016, we found that a Circuit Court judge was not disqualified from presiding over cases in which one of the attorneys rented a building from the judge's spouse. However, we also stated that "[i]f the judge believes the parties or their lawyers might consider relevant to the question of disqualification the spouse's rental arrangement, even if the judge believes there is no real basis for disqualification, then he or she should disclose the spouse's business/financial relationship on the record."

Here, while the situation is reversed -- it is the judge's spouse renting office space from the Law Firm rather than a lawyer renting from the judge's spouse-- the same logic would apply. Thus, the judge is not required to recuse himself or herself from cases in which the Law Firm appears. However, the judge should disclose on the record information that the judge believes the

parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

s/ Letitia H. Verdin
LETITIA H. VERDIN, CHAIR

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES

s/ Keith M. Babcock
KEITH M. BABCOCK

March 22, 2021