

ADVISORY COMMITTEE  
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 7 - 2019

RE: Propriety of a municipal court judge's docket clerk dating a law enforcement officer.

FACTS

A municipal court judge's docket clerk is in a relationship with a law enforcement officer for the same municipality. The docket clerk is responsible for scheduling cases and documenting events that occur in cases while in open court. The docket clerk is also responsible for case management, including recording final dispositions in Municipal Court cases and following instructions from the municipal judge(s). The docket clerk appears in court regularly and may be present at the same time that the law enforcement officer the clerk is dating appears to prosecute traffic cases. The municipal court judge inquires as to whether he or she must disclose to all parties the relationship between the docket clerk and the law enforcement officer, or if the docket clerk should be recused from handling those cases.

CONCLUSION

A municipal court judge does not need to recuse the docket clerk who is involved with a law enforcement officer, nor does the judge need to disclose the relationship.

OPINION

The Canons do not address when a judge's clerk should be recused, only a judge, stating that a judge must disqualify himself or herself in a proceeding where his/her impartiality might reasonably be questioned. Rule 501, SCACR, Canon 3E(1).<sup>1</sup>

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<sup>1</sup>While 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

This Committee has addressed, on various occasions, judges married or related to persons involved in law enforcement, with varying conclusions. See, Opinions 172002 (magistrate dating police officer must recuse himself in any matters in which the police officer appeared); 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); 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); 2-2018 (magistrate judge dating county sheriff must disqualify himself/herself in any matters in which sheriff or sheriff's employees appear as witnesses).

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 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

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reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply.”

would frequently appear before the court as a material witness.

In this case, the judge is not actually involved in a relationship with the law enforcement officer, and there is no cause to question the judge's impartiality. Furthermore, the docket clerk merely performs ministerial duties regarding case scheduling and management. Thus, there is no need to recuse the docket clerk from cases in which the law enforcement officer appears. Likewise, there is no need for the judge to disclose the relationship of the docket clerk and the law enforcement officer to all parties.

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

S/ Usha Jefferies Bridges  
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S/ Keith M. Babcock  
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May 6, 2019