

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 8 - 2018

RE: Propriety of a family court judge presiding over adoption hearings where the judge's relative is the executive director of a child-placing agency.

FACTS

A family court judge has a niece (by marriage) who is the executive director of a 501(3)(C) charitable organization and licensed child placing agency. The agency matches expectant mothers with families seeking to adopt, and charges its clients for agency fees, attorney's fees, and expectant mother expenses. Any hearing involving the agency would likely be uncontested, with the biological parents having executed relinquishments and consents to adoption. The judge would likely have no knowledge of the agency's involvement until the day of the hearing, upon opening of the sealed "For Judge's Eyes Only Packet." None of the agency's directors or employees will appear before the judge in court. Likewise, the agency does not perform any adoptive home study. Families use an outside Certified Adoption Investigator and must have an approved home study prior to signing any contract with the agency. The adoptive families retain an attorney of their choosing, not one affiliated with the agency. Thus, the agency merely serves as a matching service for expectant mothers and adopting families, but it does not appear as a party, witness, or advocate in the adoption hearing, nor does it have a financial interest in the outcome of the hearing.

The judge inquires as to whether the familial relationship would prevent the judge from presiding over adoption hearings where the agency placed the child. The judge also inquires as to whether this relationship would preclude the judge from exercising duties as Chief Administrative Judge or prevent the judge from signing pre-hearing orders, such as a Consent Order to Appoint a Guardian ad Litem.

CONCLUSION

A family court judge may preside over adoption hearings where the judge's relative is the executive director of a child-placing agency, provided that the judge makes appropriate disclosures on the record, if necessary.

OPINION

Canon 3E, Rule 501, SCACR, governs disqualification and states that a "judge shall disqualify himself or herself in a proceeding in which the judge' impartiality might be questioned, including but not limited to...." One of the enumerated reasons for disqualification is if:

(d) the judge or the judge's spouse, or a person within the third degree of relationship¹ to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Canon 3E(1)(d). While the niece is within the third degree of relationship, the restrictions in Canon 3E(1)(d) do not apply. As noted above, the agency merely facilitates the matching of expectant mothers and adoptive families, but does not conduct home studies or otherwise serve as an advocate for the adoptive families. The adoptive families hire their own attorneys. The agency's employees do not participate in the hearings. While the goal of the agency is for the matching to result in a legal adoption, the agency has no financial interest in the outcome. Thus,

¹ Third Degree of relationship includes the following: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

neither the niece nor her agency (or its employees): are parties to the proceeding, serve as lawyers in the proceeding, have more than a de minimis interest in the proceeding, or will serve as a material witness to the proceeding. Therefore, disqualification is not required under Canon 3E(1)(d).

However, the commentary to Canon 3E also notes that a judge should disqualify himself or herself in the judge's impartiality might be questioned and that 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." Thus, if the "For Judge's Only Packet" indicates that the niece's agency is involved, the judge should disclose the relationship on the record. Since these matters are uncontested, this should not create a problem or repeated disqualifications.²

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

S/ USHA JEFFERIES BRIDGES
USHA JEFFERIES BRIDGES

S/ KEITH M. BABCOCK
KEITH M. BABCOCK

May 21, 2018.

²According to the facts, the judge would not learn of the agency's involvement until opening this packet on the day of an adoption hearing. Since the pre-trial motions and orders that the judge would sign as Chief Administrative Judge as a matter of course prior to any hearing would not reflect the agency's involvement, there is no danger of the judge's impartiality being questioned.