

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 8 - 2021

RE: The propriety of hiring a part-time municipal judge, whose role includes issuing arrest warrants and setting bonds, where the candidate's brother is a local bondsman in the same municipality.

FACTS

A full-time municipal judge is seeking to hire a part-time associate municipal judge. The part-time judge would set bonds, issue warrants, release prisoners from custody, accept fine payments, etc. The candidate for the position has a brother who is a bondsman in the same municipality. The inquiring judge seeks an opinion as to whether this familial relationship would create a conflict that violates the Code of Judicial Conduct.

CONCLUSION

A conflict of interest is created when a part-time judge who issues warrants and sets bonds has a brother that acts as a bondsman in the same municipality. At the very least, an appearance of impropriety arises.

OPINION

A part-time judge is a judge within the meaning of the Code of Judicial Conduct, and compliance with the Code is required unless specifically excepted. Application Section E. Canon 3E(1) states that “[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned” including situations in which the judge's spouse or a person within the third degree of relationship¹ of the judge or judge's spouse has

¹ “Third degree of relationship” is defined in the “Terminology” section of the Code: The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

more than de minimis interest that could be substantially affected by the proceeding. Canon 2 requires a judge to act “at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” The Commentary to that section states:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The judge’s independence and impartiality comes into question where a judge issues warrants and sets bonds bond when the judge’s brother works for a bonding company in the same municipality.

We have addressed similar situations in previous opinions. In 31-1995, we found that a magistrate whose father-in-law was a bondsman in the county (and whose spouse also worked in the bondsman’s business) must disqualify himself from bond matters. We stated that a judge should disqualify himself or herself any time the judge’s impartiality might be questioned, including instances where the judge’s spouse or a person within the third degree of relationship of either of judge or spouse was known to have an interest that could be substantially affected by the outcome of the proceeding. We also noted that the appearance of impropriety was created any time the judge presided over bond matters because of the interest of the father-in-law and the judge’s spouse in the bail bond business.

In 19-1998, we again found that a part-time judge issuing warrants and releasing defendants on bond had a conflict of interest where the judge’s spouse worked as a bonding company runner in the same county. In that case we found that there was an appearance of impropriety because a defendant could reasonably believe that a judge’s decision was influenced by the marital relationship and the spouse’s employment by a bail bonds company. We found

that the appearance of impropriety was not removed even for arrest warrants or bonds in which the judge's spouse was not the bonding agent.

While the bail bondsman here is the judge's brother, rather than a spouse, the same logic applies. The brother is within the "third degree of relationship" as defined by the Code and would have more than a de minimis interest in the outcome of the proceeding. Thus, a part-time judge would have a conflict of interest in issuing warrants and setting bonds, and the frequent recusals necessary would render the candidate inappropriate for the position as assistant municipal judge.

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

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES

s/ Keith M. Babcock
KEITH M. BABCOCK

May 7, 2021