

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION 9 - 2021

RE: Propriety of a family court judge presiding over DSS matters where the judge's first cousin is the director of DSS in a county within the judge's circuit.

FACTS

A family court judge inquires as to the propriety of presiding over cases involving the Department of Social Services ("DSS") where the judge's first cousin is director of the DSS in a county within the judge's circuit.

CONCLUSION

A family court judge may preside in matters in which the judge's first cousin is the director of DSS, providing that the judge discloses the relationship on the record.

OPINION

Rule 501, Canon 3(E)(1) provides that a judge should disqualify himself or herself if the judge's impartiality may be questioned. Specifically, the canons provide that judge shall disqualify himself or herself when a person within the third degree of relationship is a party, attorney, or material witness in a proceeding, or has more than a de minimis interest. Rule 501, Canon 3E.(1)(d)(ii) and (iv). The term "third degree of relationship" refers to the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. Rule 501, Terminology.

In Opinion 10-2004, we considered a similar situation. In that case, a circuit court judge inquired as to the propriety of presiding over matters in which the judge's first cousin appeared as an attorney or a witness. We noted that the judge's first cousin did not fall within the category of "third degree of relationship" and that the judge was not required to disqualify himself or herself. However, we stated that the "judge should disclose on the record information that the

judge believes the parties or their lawyers might consider relevant to the disqualification, even if the judge believes that there is no real basis for qualification.” Commentary to Canon 3E. We concluded that if any party objected after such disclosure and offered reasons beyond the relationship, the judge would have to consider those factors and, using his or her discretion, determine if they warranted disqualification. We believe the reasoning of Opinion 10-2004 applies here.

Here, the judge’s first cousin/DSS director is not an attorney or an individually named party in the DSS cases, nor is it likely that he or she will be a material witness in proceedings before the judge. The first cousin/DSS director does not have more than a de minimis interest in each individual proceeding. Therefore, a family court judge is not required to disqualify himself or herself in DSS cases where the judge’s first cousin is the director of DSS. However, the judge must disclose the relationship on the record and if any party objected after such disclosure and offered reasons beyond the relationship, the judge must consider those objections in determining whether disqualification is appropriate.

s/ Letitia H. Verdin

LETITIA H. VERDIN, CHAIR¹

s/ Keith M. Babcock

KEITH M. BABCOCK

June 24, 2021

¹ The third member of this Committee did not participate in the drafting or approving of this opinion as it would constitute a conflict of interest.