

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 11 - 2021

RE: Propriety of appointing a part-time municipal judge whose parent is on City Council.

FACTS

A municipal judge seeks to fill the position of part-time municipal judge who will set bonds, issue warrants, release prisoners from custody, accept fine payments, etc. The candidate for the part-time position has a parent that serves on City Council in the same municipality. The judge inquires as to whether this creates a conflict with the Code of Judicial Conduct that would prevent the appointment of the candidate as the part-time municipal judge.

CONCLUSION

A candidate for part-time municipal judge may be appointed even though the candidate's parent is on City Council.

OPINION

The Committee has addressed a similar issue in in Opinion 20-1996 (available at <https://www.sccourts.org/advisoryOpinions/html/20-1996.pdf>). Two of three members found that a candidate should not serve as a municipal judge where the judge's spouse was on City Council. The third member of the committee wrote a strong dissent. In reviewing that decision, we are persuaded that the dissent contains the correct analysis and hereby overrule Opinion 20-1996.

In the 1996 opinion, the majority opinion found that because the town council had the responsibility to elect the municipal judge, determine his/her salary, provide his/her staff and quarters, and determine if termination is necessary, the presence of the proposed judge's spouse on

the council would create an appearance of impropriety. That opinion stated that:

[a]lthough the judge's spouse could disqualify herself during a direct conflict, there would remain the potential for prejudice because the remaining members of the town council are colleagues of the spouse, and possibly political allies. Hence, it would be very difficult for a council member to be objective if an issue concerning the municipal court or the municipal court judge arose.

The majority concluded that there would be an appearance of impropriety and potential for conflict.¹

However, the dissent found the focus should be on the conflicts before the court, not the hiring process, and found that “the jurisdiction and authority of the municipal judge and the town council member limit the potential for conflict.” The dissent noted that the typical case that would come before the judge would not directly affect the interests of the city council members. The dissent also stated that:

because the town council is a democratic body, any interest that the council member/spouse has is defused by the other members of the council. However, it is not unforeseeable that an issue could arise in the municipal court that could affect the specific interests of the council member/spouse,² just like any spouse of a judge has the potential to have a matter before the court upon which the judge/spouse sits. Canon 3 was designed to address such a situation. Canon 3C requires a judge to disqualify himself or herself where his or her spouse may have a financial or other interest in a proceeding. Canon 3D allows a judge to remit the disqualification if, after disclosing the interest on the record, both parties consent to the judge remaining on the case. Therefore, if a situation arises where the municipal judge feels that his wife has a special interest in the outcome of the case, the judge may use the disqualification and remittal procedures of Canon 3 to avoid impropriety and resolve any conflict.

In addition, because the City Council had no appellate jurisdiction over municipal court decisions,

¹ The majority also commented that there could be a potential for conflict because the potential municipal judge also already served as a county magistrate. That situation is not present here.

² Or any person within the third degree of relationship, which would include a parent. See, Terminology and Canon 3E(1)(c) and (d).

the dissent found there was not potential for conflict in the appellate stages. Finally, with regard to the hiring process, the dissent concluded that “[t]he fact that a candidate for an office has influence in the selecting body does not go to the qualification to sit. Indeed no family member of a legislature would be ethically allowed to run for a judgeship. Such decisions on what allows a judge to be qualified to run is best left to the body electing the judge and not to ethics.”

We find the dissent persuasive. The duties of the judge in setting bonds, releasing prisoners, accepting payment of fines, etc., do not directly affect the interests of the City Council members/the judicial candidate’s parent. Thus, there is no conflict of interest or appearance of partiality or impropriety in violation of the Code of Judicial Conduct. If a matter comes before the judge that would affect the specific interests of the council member/parent, the judge can use the disqualification/remittal procedure in Canon 3E. With regard to the hiring process, while the majority in 20-1996 found that the council member/spouse might have “political allies” that would approve the appointment of the spouse, the converse is also true; the council member might have political adversaries that would oppose the appointment of a family member as municipal judge. Thus, we do not believe the candidate is ethically prohibited from seeking appointment simply because a family member is also a council member. This Committee does believe that the parent of the judicial candidate should abstain from any discussion/evaluation of the candidate, the voting on the appointment of the candidate, the term of the appointment, and the compensation to be paid. However, that is not a matter of judicial ethics for this Committee.

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

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES

s/ Keith M. Babcock
KEITH M. BABCOCK

August 5, 2021