

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 12 - 2023

RE: Propriety of a circuit court judge presiding in cases where law firm that employs judge's spouse appears as counsel.

FACTS

A circuit court judge's spouse is a paralegal. Attorney A, for whom the spouse currently works, is joining a law firm whose attorneys regularly appear before the judge. The judge's spouse will continue to primarily work for Attorney A but may, on occasion, also work with other attorneys in the firm. The judge inquires as to the propriety of presiding in cases in which attorneys from the law firm appear.

CONCLUSION

A circuit court judge should disqualify himself/herself in contested cases in which attorneys at the firm that employ the judge's spouse appear as counsel.

OPINION

Canon 3C(1) states that a judge should disqualify himself or herself if their impartiality might be reasonably be questioned. Canon 2 states that a judge should avoid the appearance of impropriety in all activities and conduct himself/herself in a manner that promotes the public confidence in the impartiality of the judiciary.

In Opinion 6-1992, we considered whether recusal was required when the attorney that employed the circuit court judge's daughter appeared as counsel. The daughter was employed as a secretary/paralegal and expected to later become the office manager of a satellite office. The daughter was a salaried employee, with no other financial interest in the firm. The daughter still lived in the judge's home, though she planned to move out.

In that opinion, we found that recusal was not required in uncontested and default matters, without the need for disclosures. However, we found that recusal in contested matters was discretionary and advised the judge to make certain disclosures and disqualify himself/herself upon “receiving a reasonable request to do so.” See, Op. 6-1992.

The procedure discussed in Opinion 6-1992 is no longer proper in light of *In Re Barker*, 436 S.C. 610, 875 S.E.2d 44 (2022). In *Barker*, the judge made disclosures about his wife’s law enforcement employment on the record¹ and then stated: “I would be happy to disqualify myself and have another judge hear your case.” *Id.* The South Carolina Supreme Court found this method insufficient. The Court cited Canon 3E(1) regarding a judge’s requirement to disqualify himself or herself in proceedings where the judge’s impartiality might be questioned. In other words, instead of offering to disqualify himself/herself, the judge must actually make the disqualification, disclosing all relevant information relevant on the record. In *Barker*, the Court noted that the judge could preside if all parties agreed to waive disqualification pursuant to the remittal procedure in Canon 3F, which allows the lawyers time to consider, outside the presence of the judge, whether to waive the disqualification.

Here, as in Opinion 6-1992, the judge may preside over default or uncontested cases in which attorneys from the spouse’s law firm appear as counsel. In contested cases, the judge should disqualify himself/herself in any cases in which any of the attorneys from the spouse’s law firm appear as counsel. However, after following the disqualification procedure required by Canon 3F and described in *Barker*, the judge can preside if the parties agree to waive the disqualification.

¹ That matter involved a magistrate married to an employee of the Sheriff’s Office. The spouse was not directly involved in any matters but supervised other deputies who did appear before the judge. While the spouse’s employment here is as a paralegal in private practice, the holding regarding the proper disqualification procedure would apply.

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES, CHAIR

s/ William H. Seals, Jr.
WILLIAM H. SEALS, JR.

s/ Keith M. Babcock
KEITH M. BABCOCK

October 11, 2023