

ADVISORY COMMITTEE  
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 14 - 2018

RE: Propriety of a circuit court judge having a personal relationship with an employee of the Solicitor's office.

FACTS

A circuit court judge has begun dating someone who is employed by the circuit solicitor's office. The employee is not a lawyer in the Solicitor's office but is a member of the support staff. The employee's duties are restricted to one county and include receiving warrants and discovery from law enforcement agencies, as well as victims' claims and statements, and organizing the information into files on a computer system which then is sent to the assigned solicitor for his or her use in preparing indictments. The employee also communicates via phone, electronic and regular mail with the defense lawyers for discovery and scheduling of appearance, pleas, motions, or trials.

The judge inquires as to whether the judge may hear General Sessions cases within that circuit, including the county where this employee works. The judge also inquires as to whether, if there is any conflict, such conflict can be waived by the parties upon disclosure by the judge of the personal relationship.

CONCLUSION

A circuit court judge may engage in a personal relationship with an employee of the Solicitor's office, whose duties are primarily scheduling and computer management, provided that certain disclosures are made in General Sessions cases in the county in which the employee works.

## OPINION

A judge must uphold the integrity and independence of the judiciary. Canon 1, SCACR, Rule 501. Canon 2 further states that a judge must avoid all impropriety and appearance of impropriety. The Code of Judicial Conduct does not prohibit the spouse of a judge from employment by lawyers that appear before the judge. However, “[a] judge shall not allow family, social, political or other relationships to influence the judge’s judicial conduct or judgement.” Canon 2B. Canon 3.E.(1) states: “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might be questioned....” The Commentary to 3.E notes that a judge should disclose potential disqualifying information on the record.

In Opinion 5-2005, we addressed the question of whether a circuit court judge’s spouse could be employed by the circuit Solicitor as an office manager. As office manager, the judge’s spouse would supervise only non-attorneys, and would not have any duties that would include analysis or resolution of any case file. We determined that the judge was not automatically disqualified from presiding over cases involving the Solicitor and stated that the judge would be required to disclose his spouse’s employment with the Solicitor’s office and allow the parties to consider the circumstances and move for discretionary recusal if they deem necessary. We also warned that the judge must reassess the situation if there were frequent disqualification motions based on the spouse’s employment, as Canon 3(B)(8) requires that a judge “dispose of all judicial matters promptly, efficiently, and fairly,” and frequent disqualification motions might unreasonably strain judicial efficiency.

While the relationship here is not one of marriage, it is a personal relationship and thus, Opinion 5-2005 provides guidance. Like the situation in that opinion, the employee here does not have any duties that involve analysis or resolution of any case file. Thus, under the Canons

and the logic of that opinion, the inquiring judge here should disclose the judge's personal relationship with the employee of the Solicitor's office, but need only make this disclosure in the General Sessions cases in the county for which the employee is responsible. No such disclosure is needed for the General Sessions cases in other counties in the Solicitor's circuit. As in the prior opinion, if the judge's disclosure results in frequent disqualifications, the judge may need to reassess the relationship at that time.

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

S/ Usha Jefferies Bridges  
USHA JEFFERIES BRIDGES

S/ Keith M. Babcock  
KEITH M. BABCOCK

September 20, 2018