RE: Propriety of a probate judicial candidate selling law practice and leasing office space to counsel that will appear before the Probate Court.

FACTS

A candidate for Probate Judge in an upcoming election inquires as to the issues related to selling a law practice and leasing office to space to the purchasers of the law practice. If elected to the Probate Court, the candidate will need to sell his/her law firm. The candidate inquires as to whether full payment for the practice must be made prior to the judge’s swearing-in (if elected) or if the purchasers may make payments over a period of time. The candidate also currently owns the building in which the candidate’s law practice leases space and the purchasers of the candidate’s firm are likely to continue leasing space in that building. The purchasers of the firm will likely appear as counsel in the Probate Court. The candidate inquires as to the ethical implications of these arrangements.

CONCLUSION

A Probate Judge should disqualify himself/herself from presiding over cases in which the purchasers of the judge’s law firm appear during the period the purchasers are making payments and for some time after the final payment. The judge should also disqualify himself or herself in matters in which the attorneys appear if the law firm leases space in a building owned by the judge.
Canon 4D governs financial activities of a judge and states that a judge shall not engage in financial or business dealings that involve the judge in “frequent transactions or continuing business relationships with those lawyers…likely to come before the court on which the judge serves.” Canon 3E governs disqualification and states that “[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned….”

The judge’s impartiality could reasonably be questioned if he or she presides in matters in which the purchasers of the judge’s former law practice appear as counsel. While the sale of the law practice does not have to be accomplished before the judge’s swearing-in, we refer to Canon 4D(4), which states that:

[a] judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

Ideally, the purchase would be fully consummated before or shortly after the candidate ascends to the bench. However, the Canon notes that judge’s divestment of assets should be done as “soon as the judge can do so without financial detriment.” (emphasis added). In Opinion 12-2013, we considered whether a circuit court judge could receive payment of fees for a case initiated prior to ascension to the bench. In that matter, we found that the judge could receive a share of a contingency fee for services rendered prior to the judge’s appointment but we noted that “until all fees are paid, the judge should not preside in cases in which the attorney with whom the judge is sharing fees appears as counsel. Thus, it would behoove the judge to resolve the financial issues as quickly as possible.” Id.
Whether the sale here is consummated and paid for prior to the candidate’s ascension or if payments are made for some time after the candidate’s swearing in, the judge should disqualify himself or herself for a period of time (the amount of which must be determined by the judge using his/her discretion) after the final payment.

Similarly, should the candidate lease office space to the purchasers of the law firm, disqualification would be required. The business relationship of the judge and the purchasers as landlord-tenant could create a reasonable question as to the judge’s impartiality.

The county in which the candidate is running for probate court is one with an associate probate judge. Thus, for the cases in which the judge would have to disqualify himself or herself, the associate probate judge can preside.

October 21, 2022

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s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES, CHAIR

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

s/ Keith M. Babcock
KEITH M. BABCOCK

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1 In Opinion 6-2018, we addressed the question of the period of time a circuit court judge must recuse himself/herself after receiving a contingency fee payment from his former firm. We stated that we could not “make a specific rule as to how long a judge should disqualify himself or herself in cases involving the judge’s former firm.” In keeping with that finding, we decline to make such a rule in this situation as well.