

Subject: Personal Interest Between Circuit Judge and Employee of Law Firm Which May Preclude Representation.

Conclusion: It is not improper for a member of a law firm to appear before a judge whose wife is employed as an office administrator by that firm as long as the judge complies with the requirements of the Canons of Judicial Conduct and the law firm is sensitive to the requirements of DR: 5-101(A) which, under certain circumstances, may require disclosure to the client of the relationship.

Discussion: Disciplinary Rule 9-101(C) of the Virginia Code of Professional Responsibility prohibits a lawyer from stating or implying the ability to influence improperly a tribunal, legislative body or public official. The committee feels that DR:9-101(C) does not require disqualification of a law firm simply because a personal relationship exists between members or employees of the law firm and the judge. Disciplinary Rule 5-101(A) prohibits a lawyer from accepting employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances. The Committee is of the opinion that the law firm must be sensitive to the requirements of DR:5-101(A) and make appropriate disclosures, while recognizing, however, that inappropriate or unnecessary disclosures could be violative of DR:9-101(C).

Several Legal Ethics Opinions dealing with familial relationships between a judge and members or employees of a law firm are based upon Disciplinary Rule 9-101(C) and Canon 3 of the Canons of Judicial Conduct.

LE Op. 624 provides that it is not improper for a lawyer to appear before a judge even though the lawyer's law partner is married to the judge. Disclosure must be made pursuant to Canon 3 of the Canons of Judicial Conduct and the judge must be disqualified if his/her impartiality might reasonably be questioned.

LE Op. 676 provides that there is nothing inherently unethical in a lawyer appearing before a judge whose brother, brother-in-law or son is in the attorney's firm. However, it is incumbent upon the judge in those circumstances to make disclosure on the record, and, unless the parties and counsel agree, disqualify himself from further participation. LE Op. 676 also states that it is not improper for a judge's wife, who is the receptionist in the law firm of the judge's son, to handle case files in the son's law office so long as the judge's wife does not handle cases which have been assigned to her husband. Furthermore, the sole fact of the employment of the judge's wife in the law office of the judge's son would not require disclosure by the court.

LE Op. 750 states that a lawyer may appear before a judge even though the lawyer practices law with the judge's daughter.

Pursuant to DR:9-101(C), DR:5-101(A), the Canons of Judicial Ethics, and the above-cited legal ethics opinions, the committee opines that it is not improper for a lawyer to represent clients before a judge when the judge's wife serves as an administrator of the law firm. It is the opinion of the committee, therefore, that, under certain circumstances, the law firm should make disclosure of the judge's wife's employment with the firm

on the record. In this situation, if the objectivity and independence of the judiciary is questioned, then the Canons of Judicial Conduct would become operative.

Modified and Approved by Council  
October 23, 1987

In situations where there is an appearance of impropriety, the burden to correct this lies with the court. The need for disclosure, waiver or recusal are matters of judicial ethics, not lawyer ethics, and, therefore, beyond the purview of the Committee.

Committee Clarification  
February 27, 1989