

**Colorado Supreme Court
Judicial Ethics Advisory Board (C.J.E.A.B.)**

**C.J.E.A.B. ADVISORY OPINION 2005-01
(Finalized and effective March 31, 2005)**

ISSUE PRESENTED

A judge's spouse is an officer employed by a Fire Protection District. The spouse's duties include investigating fires to determine if they have been set accidentally or intentionally. The Fire Protection District has entered an intergovernmental agreement with the local Sheriff's Department. The local Sheriff's Department provides training to the fire investigators so they can be certified as peace officers. In exchange, the fire investigators assist the Sheriff's Department with arson investigations. The judge's spouse is not compensated by the Sheriff's Department and does not report to any Sheriff's Department personnel. The judge presides over a mixed docket, including criminal cases. The judge intends to disqualify from any criminal case in which the judge's spouse, or officers he or she supervises, performed investigation. Is the judge required to disqualify from other cases investigated and filed by the Sheriff's Department?

CONCLUSIONS

A judge must disqualify in any case in which the judge's spouse, or those he or she supervises, participated in the investigation of the case. Nothing in the Code of Judicial Conduct, however, requires a judge to disqualify from all cases involving a law enforcement agency for which the judge's spouse occasionally performs arson investigations.

APPLICABLE CANONS FROM THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 3C(1) generally requires a judge to "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. . ."

Canon 3C(1)(d)(IV) specifically requires a judge to disqualify when the judge's spouse is "likely to be a material witness in the proceeding."

Canon 2A requires a judge to conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2B requires that a judge "not allow family, social or other relationships to influence the judge's judicial conduct or judgment."

DISCUSSION

Canon 3C generally requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. Canon 3C also lists specific situations in which the judge must disqualify. As the requesting judge has already recognized, Canon 3C(1)(d)(IV) requires the judge to disqualify when the judge's spouse participated in the investigation of a case before the judge. Similarly, the judge must disqualify when an investigator working under the direction of the judge's spouse participated in the investigation of a case before the judge. No provision of the Code of Judicial Conduct, however, requires the judge to disqualify from all cases involving the law enforcement agency for which the judge's spouse occasionally performs arson investigations.

The Board believes that the facts of the current request do not require an automatic disqualification from cases investigated by the local Sheriff's Department. In reaching this conclusion, the Board has considered the court of appeals decision in *Smith v. Beckman*, 683 P.2d 1214 (Colo. App. 1984), which found that the marriage relationship between a judge and a deputy district attorney in the same county created an appearance of impropriety if the judge presided over cases prosecuted by the district attorney's office, even when the spouse had no involvement with a case. The facts of the request before the Board are different because the spouse of the requesting judge is employed in a non-advocate role rather than as an attorney. Also the spouse is not employed by the local Sheriff's department but rather works with the Sheriff's Department under the terms of an intergovernmental agreement. There is no appearance of impropriety under these facts because the spouse's employer is an entity separate from the Sheriff's Department and because the spouse is not an advocate.

RESOLUTION AND OPINION

The judge should disqualify from any case in which the judge's spouse or those he or she supervises have performed investigations. The judge should disclose the spouse's employment in any case in which an employee of the Fire Protection District, who is not supervised by the judge's spouse, is involved. In all other cases that involve the local Sheriff's Department, the judge should make a case-by-case determination as to whether there are facts that would cause a reasonable person to question the judge's impartiality. Under the specific facts of this request, the judge is not required to automatically disqualify from all cases that involve the local Sheriff's Department.

FORMALLY FINALIZED AND EFFECTIVE this 31st day of March, 2005, by the Colorado Judicial Ethics Advisory Board.