

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

**C.J.E.A.B. ADVISORY OPINON 2005 -02
(Finalized and effective June 3, 2005; amended June 21, 2005)**

ISSUE PRESENTED

The requesting judge presides over a county court in a small rural jurisdiction. The judge also presides over certain district court civil and criminal matters, including preliminary hearings, guilty pleas and contested and uncontested sentencing hearings in class 4, 5 and 6 felonies. The judge also sits as the drug court judge. The judge's brother-in-law is the senior member in a law firm that has fewer than five attorneys and that practices within the jurisdiction. The judge automatically recuses in all cases in which any member of the brother-in-law's firm acts as counsel. The judge recognizes that disqualification continues to be necessary in cases where the judge's brother-in-law personally acts as counsel, but requests an opinion from the Board as to whether, going forward, the judge may preside over cases in which a partner or associate in the brother-in-law's law firm is acting as counsel.

CONCLUSIONS

There is no *per se* rule requiring disqualification when a partner or associate of a relative lawyer appears before a judge. Rather, the determination of whether disqualification is required must be made on a case-by-case basis. However, under the particular circumstances of the case presented, disqualification is required.

**APPLICABLE CANONS FROM THE COLORADO CODE OF JUDICIAL
CONDUCT**

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

Canon 2B: "A judge should not allow family, social, or other relationships to influence the judge's judicial conduct or judgment." A judge should not "convey or permit others to convey the impression that they are in a special position to influence him or her."

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

DISCUSSION

Canon 3C requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. As the requesting judge recognizes, Canon 3C(1)(d) requires disqualification when the judge or his spouse, or a person within the third degree of relationship to either of them is acting as a lawyer in a

proceeding. The official commentary to Canon 3(C) helps to clarify the extent to which a judge should disqualify himself or herself from a case in which a relative is somehow involved or affiliated with the case. The commentary states that “the fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge.” However, disqualification may be required when “the judge’s impartiality might reasonably be questioned.” The determination of when disqualification is required is based upon an objective standard. The judge should consider whether a reasonable and disinterested observer, fully informed of the underlying facts, would believe that the judge’s ability to impartially perform the duties of office would in any way be impaired, or whether such a reasonable person would entertain significant doubt that justice would be done absent recusal.

The determination of whether disqualification is required when a partner or associate of a relative lawyer appears before a judge must be made by the judge on a case-by-case basis. Among the factors to be considered when deciding whether an objective observer would question the judge’s impartiality are the status of the judge’s relative as a partner or associate, the prominence of the judge’s relative’s name in the firm name, the size of the court, the size of the community, the size of the firm, and the frequency of the firm’s appearance in the judge’s court. The judge should also consider the appearance to the general public of the failure to recuse, the appearance to other attorneys, judges and members of the legal system of the failure to recuse, the administrative burden of the recusal on the courts, and the extent of the financial, professional, or other interest of the relative in the matter.

The Board believes that, while there is no *per se* rule requiring disqualification when a partner or associate of a relative lawyer appears before a judge, the particular circumstances of the current request require disqualification. The requesting judge is one of a small number of judges who preside within in a small rural jurisdiction. The legal community is relatively close-knit; the total number of attorneys that regularly appear before the judge is estimated to be approximately fifty-five. The judge’s brother-in-law and members of his firm regularly appear in the court on which the judge serves.

In all instances, it is critical for the judiciary to act, and be perceived by the public and legal community to act, with the utmost integrity and impartiality. Under the particular circumstances presented by the current request, the Board is of the belief that involvement of the brother-in-law’s partner or associates in matters before the requesting judge may give rise to an appearance of impropriety and cause objective observers to reasonably question the judge’s impartiality. The Board recognizes that the judge’s disqualification in all cases in which the brother-in-law’s law firm appears before the judge may place a greater burden on the other members of the court. However, the Board concludes that the integrity of the judiciary outweighs the inconvenience of such burden.

FORMALLY FINALIZED AND EFFECTIVE this 3rd day of June, 2005 by the Colorado Judicial Ethics Advisory Board, as amended on June 21, 2005.