

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

**C.J.E.A.B. ADVISORY OPINION 2007-09
(Finalized and effective October 2, 2007)**

ISSUE PRESENTED

The requesting judge sits on the county bench in a small, rural district where he often handles cases charged by the local police department. His spouse wishes to run for election to the City Council, which exercises supervisory responsibility over the Chief of Police and the City Manager. He is concerned that there could be an appearance of impropriety if his wife is elected to the City Council and if he were to sit on cases charged and brought by the police department. Assuming his spouse is elected to the City Council, may the judge continue to preside over cases charged by the police department?

CONCLUSION

The judge is not required to disqualify himself in cases charged by the police department. He should, however, consider whether the facts and circumstances make disqualification appropriate in a particular case. The judge should disclose that his spouse is a member of the City Council in cases charged by the police department.

APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 2 directs a judge to avoid impropriety and the appearance of impropriety in all of the judge's activities. Canon 2B specifies that a judge should not allow family relationships to influence the judge's conduct or judgment.

Canon 3C(1) provides that a judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including instances where a judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. Canon 3C(1)(d) states that a judge should disqualify himself or herself where a judge's spouse is a party to the proceeding, is known to have an interest that could substantially be affected by the outcome of the proceeding, or is likely to be a material witness in the proceeding.

DISCUSSION

Resolution of this question requires the Board to consider and reconcile the tension between the Code of Judicial Conduct, which seeks to promote a fair and impartial judiciary that is free from any appearance of impropriety, and the freedom a judge's spouse enjoys to pursue an independent career or avocation. Canon 3C provides some

guidance in reconciling these tensions, requiring disqualification from a proceeding in which the judge's impartiality might reasonably be questioned, and specifying in subsection 3C(1)(d)(IV) that disqualification is mandatory when the judge's spouse participated in the investigation or case before the judge.

We considered a similar request involving judge's duties under the Canons and a spouse's potentially conflicting employment activities in 2005-01. There, a judge's spouse was an officer employed by a Fire Protection District, which assisted the local sheriff's office in conducting arson investigations. We concluded that the judge was required to disqualify himself in any case in which the judge's spouse, or those the spouse supervised, participated in the investigation of the case. We also stated that 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 involving the sheriff's department, we cautioned the judge to make a case-by-case determination as to whether particular facts and circumstances would cause a reasonable person to question the judge's impartiality.

We apply the reasoning of 2005-01 here, and conclude that the judge is not required to automatically disqualify in all cases charged by the police department. Here, the City Council exercises no direct supervisory power over members of the police department, except through its supervision of the Chief of Police and the City Manager. This relationship would not, in the usual case, cause the judge's impartiality to be questioned. Of course, the judge should assess on a case-by-case basis whether the facts and circumstances would cause a reasonable person to question the judge's impartiality and make the disqualification decision accordingly. *See also* CJEAB 2006-05. The judge should, however, disclose the spouse's role on the City Council in any case charged by the police department.

FINALIZED AND EFFECTIVE by the Colorado Judicial Ethics Advisory Board this 2nd day of October, 2007. Professor James Wallace does not participate in this opinion.