

**JUDICIAL ETHICS ADVISORY COMMITTEE  
OF THE  
STATE OF DELAWARE**

Hon. Joseph R. Slight, III, Chair  
Hon. Mardi F. Pyott, Vice Chair  
Hon. Kenneth S. Clark, Jr., Secretary  
Hon. Sheila G. Blakely  
Hon. Donald F. Parsons, Jr.  
Hon. Robert B. Coonin  
Hon. Mary M. Johnston

May 9, 2007

JEAC 2007-2

The Honorable [redacted]  
[redacted] Court of the State of Delaware  
500 N. King Street, [redacted]  
Wilmington, DE 19801

Re: Request for Judicial Ethics Advisory Committee Opinion

Dear Judge [redacted]:

You have requested that the Delaware Judicial Ethics Advisory Committee (the “Committee”) provide an opinion concerning whether you may hear cases from a former partner and former associate who recently left the firm [redacted] where your husband remains a partner and benefited from their work and their clients’ business during their employment. You also asked whether, reasoning analogously to Canon 3C(1)(b) of the Delaware Judges’ Code of Judicial Conduct (the “Code”), you need to refrain from hearing their cases for one year.

Upon review of the relevant provisions of the Code, it is the Committee’s opinion that you may hear cases from the attorneys who recently left the Firm where your husband remains a partner if you believe you can do so impartially and neither you nor

your husband have any financial or other interest in the cases that could be substantially affected by the outcome of the proceeding or otherwise create an appearance of partiality.

Canon 3C of the Code provides that a judge should disqualify herself in a proceeding in which the judge's impartiality might reasonably be questioned.<sup>1</sup> The Code then offers a nonexclusive list of instances where disqualification is required.<sup>2</sup> Canon 3C(1)(b) provides that a judge must disqualify herself if, among other things, "the judge was associated in the practice of law within the preceding year with a law firm or lawyer acting as counsel in the proceeding."<sup>3</sup> As noted in your letter, Canon 3C(1)(b) does not apply explicitly in this situation, because you never practiced law at the Firm. Canon 3C(1)(d), however, requires a judge to disqualify herself if "the judge or the judge's spouse . . . is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding."<sup>4</sup>

The commentary to Canon 3C states, "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." A Delaware Judicial Ethics Advisory Committee Opinion from 2000 ("2000-1 Opinion"), however, required that a judge in Sussex County, on the

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<sup>1</sup> Delaware Judges' Code of Judicial Conduct Canon 3C(1).

<sup>2</sup> *Los v. Los*, 595 A.2d 381, 384 (Del. 1991).

<sup>3</sup> Delaware Judges' Code of Judicial Conduct Canon 3C(1)(b).

<sup>4</sup> *Id.* Canon 3C(1)(d)(iii).

particular facts and circumstances of her situation, disqualify herself from any proceedings involving attorneys from a firm in which her spouse was then a partner to avoid any appearance of impropriety.<sup>5</sup> “The Committee believe[d] that a perception would exist where ‘[a]n objective observer might wonder whether [the judge] might not at some unconscious level favor the firm,’ and the financial restriction devised . . . would not overcome this perception.”<sup>6</sup> Consistent with the reasoning in the 2000-1 Opinion, the Committee agrees with your assessment that to avoid an appearance of partiality you should not hear any cases in which the former attorneys appear wherein the client consulted with them or paid funds while the former attorneys were with your husband’s Firm.

The present inquiry addresses the question of whether recusal is required for attorneys who recently left a firm where the judge’s spouse remains a partner. The fundamental principle is that “judges be impartial” for the “administration of justice.”<sup>7</sup>

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<sup>5</sup> JEAC 2000-1. On another issue, the 2000-1 Opinion also states that it has long been a Delaware tradition for judges to disqualify themselves from proceedings involving their former law firms, “until they are paid for their partnership interest in full, any other financial ties are severed, and any cases pending at the time of their departure from private practice in which they have a financial interest are resolved.” *Id.*, p. 2.

<sup>6</sup> JEAC 2000-1, p. 6, citing *Blaisdell v. City of Rochester*, 609 A.2d 388, 391 (N.H. 1992). Under the “financial restriction” mentioned, the judge’s husband and other members of his firm had arranged to limit his financial share, as a partner, to a percent share of all gains realized from cases *other than* those cases adjudicated in the Court on which his spouse sat.

<sup>7</sup> *Los*, 595 A.2d at 383-85.

First, a judge subjectively must believe that she may proceed impartially.<sup>8</sup> Your request indicates that, generally, you believe that to be true. Second, a judge also must maintain the appearance of impartiality.<sup>9</sup> In this regard, Canon 3C(1)(c) and (d)(iii) are relevant.

Canon 3C(1) calls for judicial disqualification where:

(c) The judge knows that, individually . . . , the judge or the judge's spouse . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) The judge or the judge's spouse . . . :

\* \* \* \*

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding.

Although your letter suggests it is unlikely, these provisions might apply if, for example, the Firm had an ongoing dispute with the former partner or associate about some aspect of their prior relationship. If the dispute led to litigation between the Firm and the former partner or associate or even an exchange of threatening correspondence, that probably would be sufficient to create a reasonable basis to question the judge's impartiality.

Maintaining the appearance of impartiality represented the main concern underlying the decision in the 2000-1 Opinion to require disqualification of a judge from proceedings involving a spouse's firm. The Committee considers it less likely, however, that an objective observer reasonably could question a judge's impartiality where the

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<sup>8</sup> *Id.* at 384-85.

<sup>9</sup> *Id.* at 385.

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proceedings involve a former partner or associate from the judge's spouse's firm, which no longer has any financial ties with the former partner or associate, and the judge recuses herself from cases that those attorneys were involved with while at the firm and took with them. Thus, assuming that your husband, in his capacity as a partner at the Firm, has no ongoing financial ties with the former attorneys or their current work, we see no impediment to your hearing cases involving the identified attorneys under the conditions noted in your letter.

For the foregoing reasons, it is the Committee's opinion that you are not necessarily disqualified for one year or otherwise from hearing cases involving either the former partner or former associate of your husband's Firm. Judges, however, must be careful to avoid situations in which their impartiality reasonably might be questioned. In that regard, you must continue to be mindful of Canon 3C.

For the Committee:

Donald F. Parsons, Jr.  
Judicial Ethics Advisory Committee

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cc: The Honorable Randy J. Holland, Liason Justice  
Members of the Judicial Ethics Advisory Committee:  
The Honorable Joseph R. Slights, III, Chair  
The Honorable Mardi F. Pyott, Vice Chair  
The Honorable Kenneth S. Clark, Jr., Secretary  
The Honorable Sheila G. Blakely  
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