

JPC 1994-2
September 29, 1994

By your letters dated July 27, 1994 and August 5, 1994 you requested opinions from the Judicial Proprieties Committee regarding the following three issues:

- 1) Whether a Justice of the Peace can preside in the same district in which his son is employed as a Troop 7 staff sergeant for the Delaware State Police?
- 2) Whether a Justice of the Peace can preside in the same district in which his son is employed as the staff sergeant for the Milford Police Department?; and
- 3) Whether a Justice of the Peace may serve as a member or officer of the National Legislative Committee of the Marine Corps League without violating the Delaware Judges' Code of Judicial Conduct?

Below we address each of these issues.

In response to the first issue, the Committee concludes that a Justice of Peace can preside in the same district in which his son is employed as a Troop 7 staff sergeant for the Delaware State Police. There are approximately thirty-three officers, five staff sergeants, two lieutenants and one troop commander employed in Troop 7. The son's employment in the Delaware State Police should not create an appearance of impropriety when other officers from Troop 7 testify before the Justice of the Peace. However, the Justice of the Peace should disqualify himself in any proceedings in which the son, himself, is "likely to be a material witness." DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT CANON 3C(1)(d)(iv).

Although the first and second issue are similar, the smaller size of the Milford Police Department, in comparison to Troop 7 of the Delaware State Police, led this Committee to reach an opposite conclusion on the second issue. There are twenty-one officers, one staff sergeant, two lieutenants and one police chief employed in the Milford Police Department. Because the Justice of the Peace's son is the only staff sergeant in the Milford police force, it seems evident that the son's professional "interest . . . could be substantially affected by the outcome" of the proceedings in which any of the officers from the Milford police force testify. DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT CANON 3C(1)(d)(iii). Therefore, the Committee concludes that the Justice of the Peace whose son is a staff sergeant in the Milford Police Department should continue to neither be assigned to work in Milford nor hear any cases involving Milford police officers because his "impartiality [in such proceedings] might reasonably be questioned." *Id.*

With respect to the third issue, the Committee concludes that the Justice of the Peace should refrain from becoming a member or officer of the National Legislative Committee of the Marine Corps League (NLC). Canon 4 states that "[a] judge may engage in activities to improve the law, the legal system and the administration of justice", "if in doing so [he] does not cast reasonable doubt on [his] capacity to decide impartially any issue that may come before [him]." DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT CANON 4. Furthermore, Canon 5B states that a judge may not serve as an officer of a fraternal or civic organization conducted for the economic or political advantage of its members. DELAWARE JUDGES' CODE OF

JUDICIAL CONDUCT CANON 5B. If Judge _____ were to become a member or officer of the NLC his primary focus would be to promote legislation that would benefit Marines and veterans. Therefore, Judge _____ should refrain from becoming a member or officer of the NLC.

Randy J. Holland, Justice, Chairman
Chancellor William T. Allen*
Judge Vincent A. Bifferato
Judge Richard R. Cooch
Judge Paul E. Ellis*
Judge Alfred Fraczkowski
Judge Jay Paul James

*Chancellor Allen and Judge Ellis concur in the foregoing opinion with respect to the first two questions but decline to join in the concluding opinion, being uncertain that the Legislative Committee is an organization conducted for the political or economic advantage of its members.