



JUDICIAL INVESTIGATION COMMISSION

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April 25, 2006

Re: JIC Advisory Opinion 2006-06

Dear

In a recent request for an advisory opinion you asked if the wife of a magistrate could be employed in a support staff/secretarial position in the prosecutor's office. The position would include filing, typing, answering phones and closing files after completion. Additionally, the position would include referring victims to other agencies and supplying victims with information.

To address the inquiry that you have made the Commission has reviewed Canon 1 and Canon 3 of the Code of Judicial Conduct. Those Canons state in relevant part:

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.

The provisions of this Code are to be construed and applied to further that objective.

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

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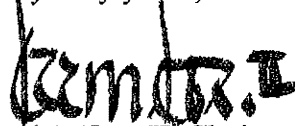
- E. Disqualification. – (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. . .

In analyzing a similar question in an advisory opinion dated September 23, 1992, the Judicial Investigation Commission wrote an opinion which stated that based on Canon 3E, it would not be appropriate for a magistrate whose wife was employed as a secretary in the prosecuting attorney's office to hear criminal matters. The Code of Judicial Conduct, which existed at that time, had a provision that permitted parties outside the presence of the judge to waive in writing any disqualification a judge may have. The current Code of Judicial Conduct does not contain such a provision. If a judge has a conflict, which disqualifies the judge, the only remedy is the recusal of the judge from hearing the case. (A copy of this advisory opinion is enclosed).

Based upon the language contained in Canon 1 and Canon 3E, it is the opinion of the Commission that the wife of a magistrate should not become an employee of the prosecuting attorney's office. Such employment would cause a conflict for the magistrate in all criminal cases and recusal in such cases would cause an undo burden on the magistrate court system.

It is hoped that this opinion fully addresses the question which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,



Fred L. Fox, II, Chairperson
Judicial Investigation Commission

FLF,II:nb