

Wyoming Supreme Court Judicial Ethics Advisory Committee

W.S.C.J.E.A.C. Advisory Opinion 2018-02

QUESTION PRESENTED

Can a circuit court judge's spouse accept a job promotion to become the director of an organization that provides domestic violence victim advocacy services, including domestic violence protection proceedings before the circuit court, without creating a violation of the Code of Judicial Conduct?

RESPONSE

The Committee answers yes to the question presented.

BACKGROUND

The requesting judge's spouse has worked for a women's advocacy organization (the "Organization") for the past eleven (11) years. The Organization has several local programs including a daycare, a financial empowerment unit, and a center for victims of domestic violence/sexual assault (the "DV Center"). The Organization has an executive director (the "Director") who manages staff, budgets and oversees all arms of the Organization's programs. Each program of the Organization has a separate program director who handles the day-to-day tactical affairs of the program but is subordinate to the Director of the Organization. The requesting judge's spouse is currently the program director of the financial empowerment program. The financial empowerment program apparently has no interaction with the judiciary. A vacancy has occurred for the Director position and the requesting judge's spouse has been asked to apply. If hired as the Director, the requesting judge's spouse would have the ultimate authority for the management of the entire Organization, including the hiring and firing of the DV Center's program director, the DV Center's budget, and the DV Center's policies and operations.

The DV Center's activities frequently involve attendance in the requesting judge's court. The DV Center provides advocates who support petitioners seeking family violence, stalking and sexual assault protection orders in the circuit court. Advocates of the DV Center routinely appear in court supporting victims seeking protection orders. The advocates do not address the court and are not licensed attorneys. According to the requesting judge, it is not uncommon to have the DV Center's advocates in circuit court between four (4) to six (6) times a week, although the Director generally does not attend. The requesting judge splits the county's docket with another circuit court judge, including domestic violence cases. While domestic violence petitioners do appear before the court without the assistance or support of the DV Center's advocates, these instances are minimal. The requesting judge has indicated that it would not be feasible (nor fair) to require the county's other circuit court judge to handle all the protection order cases wherein the DV Center serves as advocates.

The Director's other duties include interacting with multiple county agencies, including law enforcement and the county attorney's office. Fundraising is also a component of the Director's duties. The Organization is funded using federal, state and local sources along with grants from the United Way. Federal sources include funds allocated through the State of Wyoming Division of Victim Services from VAWA (Violence Against Women Act) and VOCA (Victims of Crime Act). It is unknown to the requesting judge whether these funds are used to pay the Organization's employee salaries.

The requesting judge has indicated that the Director position pays significantly more than the spouse's current position as director of the financial empowerment program.

APPLICABLE RULES OF THE WYOMING CODE OF JUDICIAL CONDUCT

Canon 1 of the Wyoming Code of Judicial Conduct provides:

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2 provides that:

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.3 provides that:

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or knowingly allow others to do so.

Canon 2 of the Wyoming Code of Judicial Conduct provides:

A judge shall perform the duties of judicial office impartially, competently and diligently.

Rule 2.2 provides that:

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.3 provides in relevant part that:

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

Rule 2.4 provides in relevant part that:

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

DISCUSSION

The Committee has been asked to advise whether the Rules of Judicial Conduct would prevent a circuit court judge's spouse from accepting a job as the head administrator of an organization that assists victims of domestic violence and that attends domestic violence hearings before the circuit court with those victims. First and foremost, the Rules of Judicial Conduct only regulate judges. The Rules do not apply to, restrict, or govern spouses of judges, and the Rules certainly do not prohibit a spouse from advancing a career. Nevertheless, the actions of a spouse can, in certain instances, cause ethical issues to arise.

The evaluation this Committee must undertake revolves around the impact caused to the judge or the judiciary by the spouse's acceptance of a job which creates real or perceived problems with judicial impartiality and external influences upon the judge. Cumulatively, the Rules set forth above address two separate, but interrelated issues: 1) the public's perception of the judiciary, and 2) acts of impropriety by judges. Rules 1.2, 1.3 and 2.4(C) primarily focus on protecting the public's perception of judges, while Rules 2.2, 2.3(A) and 2.4(B) primarily address the judge's own actions. We will address the two issues separately below.

Public Confidence in the Judiciary. Judges are required to promote "public confidence" and "avoid impropriety and the appearance of impropriety." (Rule 1.2). To foster this public confidence, judges are prevented from abusing "the prestige of judicial office to advance the personal or economic interests of the judge or others, or knowingly allow others to do so." (Rule 1.3). Further, judges are also prohibited from "convey[ing] or permit[ting] others to convey the impression that any person or organization is in a position to influence the judge." (Rule 2.4(C)). The comment to Rule 2.4 reads as follows:

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. *Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.* (Emphasis added).

In this matter, while we have concern, this Committee does not believe that the spouse's advancement to becoming the Director of the Organization, in and of itself, creates an inherent violation of the Rules protecting against the appearances of impropriety. Rather, we believe that it is the conduct and interactions, both public and private between the judge and the spouse that may give rise to violations of said Rules. For example, a

violation of Rule 1.3 would occur if the judge sent a letter of recommendation for the spouse on judicial letterhead, or if the judge attempted to impact the Organization's hiring process through promises of supporting the Organization's goals and policies. A violation of Rule 1.2 and 2.4(C) may occur if spouse attends domestic violence hearings as an advocate, or if the judge is actively involved in the Organization's events and fund-raising activities. In our small, rural communities of Wyoming, there is always some family or friend nexus that may give rise to a plausible suggestion of impartiality. We do not believe that avoiding every plausible suggestion of impartiality is the rule; otherwise, judges should be prohibited from having family and friends altogether. In this matter, the committee believes that the requesting judge can avoid an appearance of impartiality if the judge and spouse are mindful and prudent to preserve the judge's actual and perceived independence from the influence of the spouse and the Organization.

Acts of Impropriety. Judges shall "perform all duties of judicial office fairly and impartially" (Rule 2.2) and shall perform such duties "without bias or prejudice." (Rule 2.3(A)). In addition, "a judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment." (Rule 2.4(B)). This Committee has no doubt that judges, in general, can faithfully follow the Rules governing judicial action, and exercise and preserve their independence and judgment, regardless of their spouse's employment. However, at this time, only the requesting judge in this matter can subjectively determine whether such a change in the spouse's employment will cause, or is likely to cause, prohibited impartiality or bias in the performance of that judge's duties. While we find that the requesting judge will not be in automatic violation of Rules 2.2, 2.3(A) or 2.4(B) if the spouse becomes the Director of the Organization, the judge must remain vigilant and mindful that such violations do not occur because of the spouse's position or influence.

CONCLUSION

We believe that the requesting judge may continue to preside over domestic violence cases in the circuit court in the event the requesting judge's spouse becomes the director of an organization that advocates for victims of domestic violence. We do, however, believe that it is prudent to make the following recommendations:

1. The requesting judge should not discuss with the spouse the Organization's domestic violence policy, activities, advocates, or victims.
2. The requesting judge should not participate or attend the Organization's events or activities.
3. The requesting judge should advise the spouse not to promote or comment upon the spouse's marriage or relationship with the judge in the course of the job interview process or in any aspect of the performance of the spouse's employment duties with the Organization.

FINALIZED AND EFFECTIVE this 15th day of November, 2018 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.