

Maryland Judicial Ethics Committee

Opinion Request Number: 2012-05

Date of Issue: February 27, 2012

■ Published Opinion □ Unpublished Opinion □ Unpublished Letter of Advice

Recusal of Judge Whose Spouse is Acting as a Lawyer in a Proceeding Does Not Necessitate That Other Judges of the Same Court Also Recuse Themselves

Issue: When *one* judge is required to recuse him/herself from proceedings in which that judge's spouse is acting as a lawyer, must *other judges of the same court* do so as well? If so, must the other judges also recuse themselves from proceedings in which other members of the spouse's firm appear as lawyers?

Answer: No. When the basis for a judge's recusal is his/her marriage to a lawyer in a proceeding, other members of that judge's court are *not* also required to recuse themselves on that basis alone.

Facts: The requesting judges ("the Requesting Judges") serve with another judge of the same court who is married to an attorney ("the Attorney") whose firm regularly practices in that court. The judge who is married to the Attorney recognizes that he/she should recuse him/herself from proceedings in which the Attorney is acting as a lawyer ("the Recused Judge"). The Requesting Judges have inquired whether they too must recuse themselves from proceedings involving the Attorney, and if so, whether they must also recuse themselves from proceedings in which *another* member of the Attorney's *firm* might act as a lawyer.

Discussion: Rule 2.11 of the Code of Judicial Conduct (Md. Rule 16-813) (the "Code") provides, in pertinent part:

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, *including* the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or *a party's lawyer*, or personal knowledge of facts that are in dispute in the proceeding.

(2) *The judge knows that ... the judge's spouse ... :*

* * *

(B) is acting as a lawyer in the proceeding ... [emphasis added].

The Recused Judge's recusal from proceedings in which the Attorney is acting as a lawyer is

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expressly required by Rule 2.11(a)(2)(B). However, Rule 2.11(a)(2)'s application is limited to the judge whose "spouse ... is acting as a lawyer in the proceeding" and does not extend to *other* judges not so related by marriage.

To the extent the Requesting Judges' inquiry may have been prompted by concerns about a possible imputation of a conflict of interest to the Requesting Judges, the Judicial Ethics Committee ("the Committee") notes that while some of the ethical responsibilities of attorneys and judges overlap and reinforce one another (*see, e.g.*, Rule 8.4(d) of the Maryland Lawyers' Rules of Professional Conduct and Rule 2.15 of the Code), their roles and consequent ethical responsibilities are not identical. Thus, while Rule 1.10 of the Maryland Lawyers' Rules of Professional Conduct can cause a conflict of interest of one attorney to be imputed to other members of the same law firm, the Code of Judicial Conduct does not have any equivalent rule which imputes a conflict of interest on the part of *one* judge to *other* judges of the same *court*. Accordingly, the Committee does not believe that the Requesting Judges must recuse themselves from cases involving the Attorney simply because the Recused Judge is married to the Attorney. No conflict of interest is imputed to the Requesting Judges.

Before listing specific grounds for recusal, however, Rule 2.11 uses the word "including," and as Comment [1] to Rule 2.11 notes, "[u]nder this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, *regardless of whether any of the specific provisions in paragraphs (a) (1) through (5) apply.*" (Emphasis added). Consequently, the Requesting Judges should be attentive to the potential that circumstances not specifically mentioned in their inquiry might necessitate recusal.

If, for example, the Requesting Judges were to have "a personal bias or prejudice concerning ..." the Attorney (regardless of its origin or whether favorable or unfavorable), recusal could be necessary under Rule 2.11(a)(1). Furthermore, even in the absence of actual bias or prejudice, judges must always be cognizant of both the nature (social or professional versus familial or financial) and extent (inconsequential or passing versus significant or intimate) of such relationships, as well as the perception thereof by the public (e.g., whether any such relationship might undermine the "public confidence in the independence, integrity, and impartiality of the judiciary" or "create in reasonable minds a perception of impropriety" (Rule 1.2) or cause "the judge's impartiality ...[to] reasonably be questioned" (Rule 2.11)). The Committee does not, however, believe that the limited facts presented by the Requesting Judges suggest any grounds requiring their recusal.

Finally, having concluded that recusal by the Requesting Judges from proceedings in which the Attorney is acting as a lawyer is not required by the Code, the Committee does not believe that their recusal is required when another member of the Attorney's firm acts as a lawyer

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before the Requesting Judges.¹

Application: The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct of the requestor described in this opinion, to the extent of the requestor's compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this opinion.

Additionally, this opinion should not be considered to be binding indefinitely. The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If you engage in a continuing course of conduct, you should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.

¹ The Requesting Judges' inquiry does not expressly indicate that the Recused Judge will also recuse him/herself from proceedings in which *another member of the Attorney's firm* might act as a lawyer. Whether such recusal would be appropriate could depend upon many of the more general considerations noted above, including whether any such recusal might nevertheless be subject to waiver pursuant to Rule 2.11(c), or whether Rule 2.15 might require the Recused Judge to "take ... appropriate corrective measures" in the event that Rule 1.10 of the Maryland Lawyers' Rules of Professional Conduct might act to impute any conflict of interest of the Attorney to other members of the Attorney's firm were they to appear in proceedings before the Recused Judge. The Committee has not been asked to opine on this issue by the judge to whom such considerations might pertain; nor has the Committee been provided the facts upon which it might base any such opinion.