



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2009-02

June 11, 2009

QUESTION:

Is a newly installed judge required to disqualify from criminal cases prosecuted by the District Attorney's office where the judge was formerly employed?

Initially this inquiry addressed a very specific circumstance regarding a judge who was employed as an Assistant District Attorney (ADA) immediately prior to the judge's election to the District Court Bench. Employment responsibilities during the final 18 to 24 months of employment as an ADA were essentially limited to prosecuting criminal cases in superior court. In the normal course of work, ADA's prosecuting in district court rarely, if ever, shared information about matters with ADA's prosecuting in superior court, unless a matter was appealed following a conviction in district court.

COMMISSION CONCLUSION:

The Judicial Standards Commission determined it to be appropriate for a judge who was formerly employed as an assistant district attorney to preside over criminal district court cases prosecuted by the District Attorney's office, provided the judge disqualifies from hearing any matter wherein the judge 1) was involved in the matter's investigation or prosecution, 2) has personal knowledge of disputed evidentiary facts, or 3) when the judge believes he/she cannot be impartial.

The Commission advises the best practice is for judges to follow a "Six Month Rule" whereby newly installed judges, for a minimum of 6 months after taking judicial office, refrain from presiding over any adjudicatory proceeding wherein an attorney associated with the judge's prior employer provides legal representation to a party in the proceeding. Specific circumstances may necessitate a deviation for the "Six Month Rule". However, judges should always disqualify in the three instances delineated above unless all counsel and pro se parties waive the potential disqualification pursuant to the remittal of disqualification procedures set out in Canon 3D of the Code of Judicial Conduct.

DISCUSSION:

Canon 3C(1) of the North Carolina Code of Judicial Conduct provides that, upon motion, judges should disqualify in proceedings in which their impartiality "may reasonably be questioned". Subparagraph (b) provides for disqualification of the judge when "[t]he judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter". However, the Commission considered relationships between attorneys working in the district attorney's office to be distinguishable from those between attorneys working together in a private law firm. Factors such as the division of duties between attorneys prosecuting in district and superior court, prosecuting attorneys being assigned

to a particular county in a multi-county district, and the sheer volume of cases prosecuted in district criminal court impact the reasonableness standard by which a judge's impartiality must be considered.

References:

North Carolina Code of Judicial Conduct

Canon 3C(1)(b)

Canon 3D