

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 00-01
(April 7, 2000)

**Disqualification Considerations When
Child of Presiding Criminal Judge
Is on Prosecution Staff**

Issues

1. May the presiding judge of the criminal divisions, in which his son regularly appears as a prosecutor, continue to act as the presiding criminal judge and as a criminal trial judge?

Answer: Yes.

2. Is the judge required to notify defendants that his son is a deputy county attorney?

Answer: No.

Facts

The son of a superior court judge is a deputy county attorney who prosecutes cases in the criminal court divisions of the superior court. The judge is, and has been for a number of years, the presiding judge of the criminal court divisions, which consist of twelve judges, out of a total of twenty-seven judges. The criminal divisions have sentenced over 5000 felony offenses in the past year. The responsibilities of the presiding criminal judge are administrative in nature. The presiding judge has no supervisory authority over other judges and is not responsible for the assignment of cases or the processing of cases that are not assigned to him. The judge, in addition to being the presiding criminal judge, also is a criminal trial judge as to those cases assigned to him. The judge disqualifies himself in any case involving his son. His son does not reside in the judge's household.

Discussion

Canon 2 of the Code of Judicial Conduct requires that a judge avoid impropriety and the appearance of impropriety in all activities. Canon 3E requires a judge to disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned.

In Opinion 98-02, we set forth the test for disqualification as:

Whether an objective, disinterested observer, fully informed of the facts underlying the grounds on which disqualification was contemplated, would entertain a significant doubt that justice would be done in the case.

Advisory Opinion 00-01

Stated in terms of the issue here, would an objective, disinterested observer, fully informed, entertain a significant doubt that justice would be done with respect to a defendant appearing before the presiding criminal court judge or before other judges in criminal divisions where the son of the presiding criminal judge is on the prosecutor's staff?

This committee has, on several occasions, written opinions on the issue of disqualification due to employment of family members with agencies that have frequent involvement with the courts. A review of these opinions and the application of the test necessarily results in each opinion being determined by the particular facts presented.

In Opinion 77-01 we opined that a judge did not have to recuse himself where his daughter was employed as a paralegal in a law firm appearing in a case before him unless his daughter's work on the case was so extensive that a question might arise.

In Opinion 85-01 we opined that a judge did not have to disqualify himself or herself from criminal cases when the judge's spouse was a member of the public defender's office or a law enforcement agency so long as the spouse does not appear before the judge or have any interest in the outcome of a case that could reasonably affect his or her respective professional or financial interest. These opinions also settled the issue, insofar as the committee was concerned, as to there being no application of the doctrine of vicarious disqualification of an entire office when issues of this nature arise.

In Opinion 91-01 we opined that a superior court judge did not have to disqualify himself in a case where the defendant appearing before him was also being prosecuted on an unrelated federal charge by the judge's spouse who was in the U.S. Attorney's office.

In Opinion 95-19 the committee considered the issue of whether a superior court commissioner, acting as a judge pro tem, was required to disqualify herself from cases in which the prosecutors, who regularly appeared before her, were supervised by her spouse who was a supervising attorney in the prosecutor's office. The committee opined that so long as the spouse had only an administrative role such as scheduling appearances, disqualification would not be required. If, however, the spouse attorney was responsible for evaluations of attorneys' performances before the judge, or if the spouse attorney was responsible for reviewing the judge's minute entry rulings for errors, or advised and consulted with those he supervised regarding trial techniques, strategy, evidentiary questions, sentencings, or other matters not of an administrative nature, then there would be reasons for.

A review of judicial opinions from other jurisdictions supports the conclusion that a judge whose child was a county prosecutor did not need to disqualify himself or herself from cases involving defendants being prosecuted by the same office. *See Walls v. Spell*, 722 So. 2d. 566 (Miss. 1998), *In re Matter of Hatcher*, 150 F. 3d 631 (7th Cir. 1998); *Trimble v. State*, 871 S.W. 2d 562 (Ark. 1994); *People v. Moffat*, 560 N.E. 2d 352 (Ill. App. Ct. 1990); *State v. Loera*, 530 So. 2d 1271 (La. Ct. App. 1988); *State v. Logan*, 689 P.2d 778 (Kan. 1984).

Advisory Opinion 00-01

In the case presently before us there are the following important factors:

1. The family relationship is one of father and a son who does not reside in the family household.
2. There are no appearances by any family member before the superior court judge or by any attorneys under the family member's supervision.
3. The superior court judge, although the presiding judge of the criminal divisions, has administrative functions only and is not involved in supervising, case processing, or scheduling cases before other judges.
4. The judge here is a presiding criminal judge in a large metropolitan city where thousands of cases are processed by numerous judges.

Under the facts presented here the committee does not believe that the judge is required to disqualify himself either as criminal presiding judge or from a criminal assignment because his son is employed by the prosecutor's office and handles cases within the criminal divisions. We do not believe that an objective, disinterested observer, fully informed of the facts, would entertain significant doubt that justice would be done in cases before the inquiring judge or before other judges in the criminal divisions.

The second issue raised here is whether the judge is required to notify defendants that his son is a deputy county attorney. The committee does not believe the judge is required to notify defendants that his son is a deputy county attorney. This is a matter left to the discretion of the judge.

Conclusions

A judge who is the presiding criminal court judge in a large metropolitan area and whose son is employed in the prosecutor's office as a trial attorney does not have to recuse himself from either his assignment as presiding criminal judge or from criminal cases assigned to the judge which do not involve his son.

The judge is not required to notify defendants who appear before him that his son is employed in the prosecutor's office as a trial attorney.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2 and 3E (1993).

Other References

Arizona Judicial Ethics Advisory Committee, Opinions [77-01](#) (April 29, 1997); [85-01](#) (1985); [91-01](#) (April 29, 1991); [95-19](#) (Oct. 20, 1995); [98-02](#) (March 24, 1998).

In re Matter of Hatcher, 150 F. 3d 631 (7th Cir. 1998).

People v. Moffat, 560 N.E. 2d 352 (Ill. App. Ct. 1990).

State v. Loera, 530 So. 2d 1271 (La. Ct. App. 1988).

Advisory Opinion 00-01

State v. Logan, 689 P.2d 778 (Kan. 1984).

Trimble v. State, 871 S.W. 2d 562 (Ark. 1994).

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