

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 97-07
(June 16, 1997)

**Disqualification Because of Loan from
Law Firm's Profit Sharing Plan**

Issue

Is a judicial officer who has borrowed monies from a law firm's employee profit sharing plan to finance a real estate transaction disqualified from ruling on matters involving members of the law firm?

Answer: Yes.

Facts

A commissioner and his wife borrowed money from a law firm's profit sharing plan prior to his judicial appointment for the purpose of purchasing a residential lot upon which to build a home. The loan is fully secured. The law firm has no direct interest in the profit-sharing plan. The trustees are two current firm members and the beneficiaries are current and former members of the firm. The commissioner was not previously associated with the law firm.

Discussion

Canon 4D(1), of the Code of Judicial Conduct provides that a judge shall not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position, or involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

In addition, Canon 3E requires a judge to disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned. The commentary to this canon requires a judge to disclose, on the record, information that the judge believes the parties or their lawyer might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

The means for a judge who is disqualified by Canon 3E to disclose, on the record, the basis for that disqualification is found in Canon 3F. If the parties and their lawyers, after disclosure and an opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, the judge may participate in the proceedings.

In this instance the making of a loan with a law firm's profit-sharing plan was an isolated transaction that would not involve the commissioner in a continuing business relationship with lawyers or other persons likely to appear before the commissioner. Nor would this

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isolated transaction, which was initiated prior to the commissioner's appointment, be reasonably perceived to exploit the commissioner's judicial position. As pointed out in the facts, the law firm has no direct interest in the profit-sharing plan. The two trustees are current members of the firm, the beneficiaries are current and former members of the firm, and the commissioner had no prior association with the firm.

Although Canon 4D is not applicable here, the committee finds that Canon 3E is applicable. The law firm's indirect interest in the profit-sharing plan, and the fact that two current members of the firm are the trustees, might reasonably raise a question as to a judge's impartiality in matters involving lawyers or other persons connected with the law firm or the profit-sharing plan. Thus, the judicial officer here should disqualify himself from all matters in which the law firm or persons connected with the firm or profit-sharing plan either appear or are involved regardless of whether the cases are default matters or litigated matters. The remittal of disqualification procedure set forth in Canon 3F is also applicable and would serve to provide not only notice, but an opportunity for attorneys and litigants to agree that the judicial officer should not be disqualified.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 3E, 3F and 4D (1993).