



STATE OF VERMONT
JUDICIAL ETHICS COMMITTEE

Opinion No.: 36
Date: July 15, 2025
To: [name redacted in posted version pursuant to A.O. 35, ¶ 6]

The Committee has researched and reviewed the matter you presented to it. The following is the opinion of the Committee and a response to your inquiry pursuant to Administrative Order No. 35.

Question Presented

Must a judge disclose the judge’s spouse’s business relationships, which include entities or individuals who regularly have business in or may appear in the courts, even though the judge is not an owner or an employee of the business, and, if so, how does disclosure occur?

Short Answer

Generally, a judge should disclose any known relationship between a business owned by the judge’s spouse and individuals or entities that appear before the court, even if the judge determines disqualification is not required.

Relevant Provisions of Code of Judicial Conduct

The relevant provisions of the Vermont Code of Judicial Conduct 2019 (“the Code” or “V.C.J.C.”) include the following rules and guidance:

- Canon 1, Rule 1.2: “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.”
- Canon 2, Rule 2.11. Disqualification: (A) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances: . . . (3) The judge knows that he or she, individually or as a fiduciary, or the judge’s spouse, domestic partner, parent,

or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding. . .

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may advise the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding.

(D) A judge shall disclose to the parties on an ongoing basis . . . (3) any other fact or matter relevant to the question of impartiality that, in the judge's view, may require disqualification under Rule 2.11(A). Unless a party promptly moves to disqualify on the basis of a disclosure under (1) or (2), the judge may continue to participate in the proceeding

- Canon 3, Rule 3.11(C): (C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will: (1) interfere with the proper performance of judicial duties; (2) lead to frequent disqualification of the judge; (3) 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; or (4) result in violation of other provisions of this Code.

Background

A judge's spouse owns a computer company that provides computer and related services to the public. The judge is aware that the business provides services to law firms and law enforcement agencies who regularly have business in the courts. The judge does not monitor or keep track of business customers and notes that other customers of the business may also include victims or witnesses appearing in the courts. The judge is not an owner or employee of the spouse's computer business.

Analysis

The Vermont Code of Judicial Conduct 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 1.2. "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament,

or fitness to serve as a judge.” *Id.*, Comment 5.

A judge is required to disqualify themselves in any proceeding in which their impartiality might reasonably be questioned. Rule 2.11(A). Such circumstances include when “[t]he judge knows that . . . the judge’s spouse . . . has an economic interest in the subject matter in controversy or in a party to the proceeding.” Rule 2.11(A)(3). “‘Economic interest’ means ownership of more than a de minimis legal or equitable interest.” V.C.J.C., Terminology. The Code further requires that a judge “make a reasonable effort to keep informed about the personal economic interests of the judge’s spouse.” Rule 2.11(B).

When such grounds for disqualification arise, the judge “may disclose on the record the basis of the judge’s disqualification and may advise the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification.” Rule 2.11(C). “If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding.” *Id.* The judge is required to disclose to the parties on an ongoing basis “any other fact or matter relevant to the question of impartiality that, in the judge’s view, may require disqualification under Rule 2.11(A).” Rule 2.11(D)(3).

“The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge.” Rule 2.11, Comment 4. “If, however, the judge’s impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge’s disqualification is required.” *Id.* A judge may manage or participate in a business closely held by members of the judge’s family except if they lead to frequent disqualification 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.” Rule 3.11(B)(1) and (C)(2)–(3).

The New York Advisory Committee on Judicial Ethics has noted that “[a] judge’s obligations based on a business or financial relationship between their spouse and a particular individual are necessarily fact-dependent.” NY Jud. Adv. Op. 20-126, 2020 WL 8257484 (Sept. 10, 2020) (collecting opinions). Situations in which disqualification, disclosure, or recusal have been necessary included where an attorney, party, or witness had “significant business dealings” with the spouse’s business interest in a bank; where an attorney appeared who rented an office from a judge’s parents or spouse who owned an office building; and where a judge doubted their own ability to be impartial. *Id.* (citations omitted). Situations where a judge was not required to disqualify themselves or disclose a business relationship included when attorneys merely had “occasional, discrete” business relationships with the judge’s spouse or relative. *Id.* (citations omitted). The obligation to make reasonable efforts to remain informed about the spouse’s financial interests “should be informed by an awareness of the judge’s disqualification and disclosure obligations.” *Id.*

The same committee determined that the rules did not require disqualification when an attorney from a prosecutor's office or other law enforcement agency that employs the judge's spouse in a clerical capacity appears in the judge's court unless the judge's impartiality could reasonably be questioned, as long as the judge could remain impartial and affirmatively disclose the partner's employment so that a party could have the opportunity to decide whether to waive disqualification. NY Jud. Adv. Op. 18-06, 2018 WL 1997949 (Apr. 5, 2018). On the other hand, the committee concluded that a judge should exercise recusal in any matter involving a law firm or its attorneys for the duration of a project for which the law firm has hired the judge's spouse to act as its architect, due to the appearance of impropriety as well as the spouse's economic interest in the economic well-being of the firm. NY Jud. Adv. Op. 02-136, 2002 WL 34340032, (Dec. 5, 2002) (noting that judge should also disclose the relationship, and recuse if a party objects, for a two-year period following the satisfaction of all obligations between the parties).

The fact that the judge's spouse is a consultant on behalf of one of the attorneys or parties in a case before the court does not provide an "automatic basis" for disqualification, but the current economic relationship does trigger the duty to disclose. Nevada Standing Comm. Jud. Eth, Op. JE03-001, 2003 WL 26088481 (April 2, 2003) ("In the event of a current financial relationship between attorney and physician spouse, even if the judge believes that she can be impartial, disclosure to the attorneys is required by the Canons.") The facts presented here do not necessarily show that the spouse's continued contractual relationship would be affected by the outcome of the litigation before the judge, but if that were the case, disqualification would be required. *See, e.g.*, Fla. Judicial Ethics Opinion 2024-05, 2024 WL 1725432 (April 11, 2024) ("Judge is disqualified from serving on county election canvassing board for the specific race involving the elected county official by whom the judge's spouse is employed as general counsel where the spouse's continued employment in that position likely depends on the outcome of the upcoming contested election.").

The Nevada Standing Committee on Judicial Ethics addressed a situation in which a judge's spouse had a cleaning business that contracted with an attorney who appeared before the judge. Nevada Standing Comm. Jud. Eth., No. JE16-003, 2016 WL 3951351 (July 15, 2016). Similar to the situation before this committee, the specifics of the proposed contract between the judge's spouse and the attorney were not known, but it was apparent that the spouse would receive income from an attorney who appeared before the judge. *Id.* More information would be needed to determine if the relationship would create an "economic interest," but the appearance of impropriety (Rule 1.2) would be sufficient to require disqualification. *Id.* The judge could disclose the relationship to the parties under Rule 2.11(C) and ask the parties to consider whether to waive the disqualification. *Id.*

The question posed to the Committee does not provide enough information to analyze the economic interest at stake and thus whether disqualification is clearly required. If the spouse's continued or repeated contracts with and income from the attorney, party, or witness would potentially be affected by the outcome of the litigation before the judge,

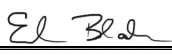
then disqualification is required under Rule 2.11(A)(3)—for example, if the spouse’s particular services to the attorneys or law enforcement agency could be seen as related to the effectiveness of the parties in court and future contracted services depended on the outcome of the litigation. If the economic interest is substantial but less direct, such as in the NY opinion above in which the judge’s spouse depended on the economic well-being of the firm that hired them, and the outcome of the litigation would substantially affect the firm’s ability to pay or continue to do business with the judge’s spouse, then disqualification is similarly required. *See also* Nevada Standing Comm. Jud. Eth., Op. JE08-14, 2008 WL 8681380 (Oct. 16, 2008) (disqualification required where lawyer-tenants of judge’s real estate property appear before judge in “matters from which they partially derive the professional income used to pay these leases”).

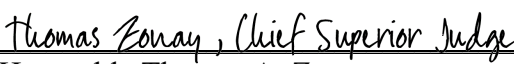
In cases where it is not clear that the spouse’s financial interests would be affected by the outcome of the litigation, there is still a risk that the judge’s impartiality might reasonably be questioned, and it is advisable to disclose the relationship so that parties may decide whether to waive disqualification. The judge should consider the specific facts of each business relationship to decide whether, even if not a ground for disqualification under Rule 2.11(A)(3), the appearance of impropriety would require disqualification or at least disclosure. In any case, the judge must make reasonable efforts to remain aware of the spouse’s relationships with parties and attorneys who appear in court. If the judge learns of the relationship after litigation before them has already commenced, the judge should disclose the relationship when the judge becomes aware of it.

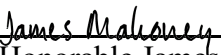
Conclusion

For the reasons discussed herein, this Committee finds it advisable that the judge remain aware of the relationships of the judge’s spouse with those appearing before the judge. The judge should consider the facts of each relationship to determine if disqualification is required because of the spouse’s economic interest. Even if disqualification is not required, disclosure of any such relationship may be required to avoid an appearance of impropriety. In fact, the Committee recommends that to preserve the integrity and impartiality of the bench, disclosure would generally be prudent, even if the judge is not aware of circumstances that would specifically require it.

Members of the Judicial Ethics Committee

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