



STATE OF VERMONT
JUDICIAL ETHICS COMMITTEE

Opinion No.: 41
Date: August 31, 2026
To: [name redacted in posted version pursuant to A.O. 35, ¶ 6]

The Committee has considered 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

May a Superior Court judge whose spouse holds a leadership position at a designated mental health agency address requests for mental health warrants initiated by the spouse's employer and preside over matters arising out of such requests?

Short Answer

No, the judge should recuse themselves.

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 definitions:

RULE 1.2: Promoting Confidence in the Judiciary: 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 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:

(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, the judge's spouse or domestic partner, or a person within the fourth degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in 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. ...

Background

A charitable nonprofit organization is designated as the provider for mental health and developmental disability services for the county ("the designated agency"), and the preferred provider for substance use services. Its clinical and social service staff are often involved in mental health cases being heard in the Vermont Superior Court. The judge's spouse holds a position on the leadership team at the designated agency that oversees human resources and reports directly to the chief executive officer of the designated agency. The spouse does not oversee any clinical staff or service, support programs, provide any services to the agency's clients, and does not report to the chiefs of the clinical or other services divisions.

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 himself “in any proceeding in which the judge’s impartiality might reasonably be questioned.” Rule 2.11(A). That includes situations when the judge knows that the judge’s spouse is “(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party” or “(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding.” Rule 2.11(A)(2)(a), (c).

This committee has previously considered the question of whether a judge who is the first cousin, once removed of a state’s attorney is required to recuse themselves from cases in which the state’s attorney or one of their deputies appears before the judge. Op. No: 2728-16, 2015 WL 3602345, at *1 (VT Jud. Eth. Comm. April 29, 2015). The committee concluded that because the judge’s relationship was so distant, recusal was not automatic but that the judge should nevertheless disclose the familial relationship in all cases involving the state’s attorney’s office. *Id.*

The Florida Judicial Ethics Advisory Committee has considered the question of whether “a county court judge [was] required to recuse himself/herself from cases at bond hearings or on warrant duty when the judge’s spouse is the chief of the felony division at the State Attorney’s Office in the same county where the judge presides.” Op. No. 2024-14, 2024 WL 4137559, at *1 (FL Jud. Eth. Adv. Comm. Sept. 3, 2024). That committee decided that “it would not be proper for the judge to sign search warrants and/or arrest warrants where the spouse has discernable involvement in the case.” *Id.* at *2. The committee noted that “supervision does not have to be direct” and “[i]f the spouse is a supervisor in the chain of command of the prosecutors who appear before the judge, then the judge cannot preside over the case.” *Id.* The same committee had earlier determined that a judge who was married to a deputy sheriff who had a supervisory role at the sheriff’s office could “sign search warrants from the sheriff’s office as long as the judge’s spouse is not the author of the affidavit or warrant and has no discernable direct involvement in the case.” Op. No. 2023-05, 2023 WL 5392611, at *2 (FL Jud. Eth. Adv. Comm. June 20, 2023).

The Washington Ethics Advisory Committee has concluded that a judge whose spouse was employed by the sheriff’s office with supervisory responsibility over three deputy sheriffs should not sign warrants for law enforcement officers who are supervised by the judicial officer’s spouse or in any cases in which the spouse had any involvement in the investigation. Op. No. 94-01, 1994 WL 16831621, at *2 (WA Eth. Adv. Comm. May 31, 1994).

Although the Florida and Washington opinions focus on the level of the spouse’s supervisory involvement with those appearing before the judge, the more salient factor to consider is the prominent role that the spouse fulfills at the designated agency. The Oklahoma Judicial Ethics Advisory Panel addressed the question of whether a judge must

recuse in cases where employees of a non-profit agency, of which the judge's wife is CEO, testify as witnesses after performing forensic interviews. Op. No. 2025-1, 2025 WL 2946680, at *1 (OK Jud. Eth. Adv. Pan. Sept. 5, 2025). The panel concluded that despite the CEO's lack of actual involvement in the interviews or cases, "everyone ultimately reports to her," and the organization, and therefore the CEO, could have financial or reputational interest in the outcomes. *Id.*

Where a judge's child was employed by a department whose employees appeared frequently before a judge, the Massachusetts Committee on Judicial Ethics recommended that the judge consider several factors to determine whether the judge should recuse himself:

- Whether the Department's interests are likely to be affected by the proceeding, and, if so, to what degree;
- Whether your child's interests are likely to be affected by the proceeding, and, if so, to what degree;
- Whether any party to the proceeding is known to you by virtue of their relationship or association with your child and, if so, the nature of that relationship or association;
- Whether you are independently aware of any information that would be relevant to the proceeding as a result of your associations with the Department; and
- Whether any party to the proceeding has direct or indirect supervisory authority over your child.

Letter Opinion of the Committee on Judicial Ethics, 2023 WL 3470737, at *4 (MA Sup. Jud. Ct. Comm. Jud. Eth. May 4, 2023).

Here, the judge's spouse holds a position of sufficient leadership within the designated agency that even though the spouse may not directly supervise any person appearing before the judge and may not have direct knowledge of the matter before the judge, a reasonable person could perceive that the spouse's position gives them more than a de minimis interest in the matter. Thus, the circumstances are such that the judge's impartiality could be questioned. A judge who is subject to disqualification because of their spouse's activities generally "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." Rule 2.11(C).

In this case, the question relates to warrants for emergency examination under 18 V.S.A. § 7505.¹ That statute provides that under certain circumstances, a “mental health professional may make an application, not accompanied by a physician's certificate, to any Superior judge for a warrant for an emergency examination.” 18 V.S.A. § 7505(a). “If the

¹ **§ 7505. Warrant and certificate for emergency examination**

(a) In emergency circumstances where certification by a licensed physician is not available without serious and unreasonable delay, and when personal observation of the conduct of a person constitutes reasonable grounds to believe that the person is a person in need of treatment, and the person presents an immediate risk of serious injury to self or others if not restrained, a law enforcement officer or mental health professional may make an application, not accompanied by a physician’s certificate, to any Superior judge for a warrant for an emergency examination. The application shall be based on facts personally observed by the mental health professional or the law enforcement officer or shall be supported by a statement of facts under penalty of perjury by a person who personally observed the facts that form the basis of the application.

(b)(1) The law enforcement officer may take the person into temporary custody if the law enforcement officer has probable cause to believe that the person poses a risk of harm to self or others. The law enforcement officer or a mental health professional shall apply to the court for the warrant without delay while the person is in temporary custody. The law enforcement officer, or a mental health professional if clinically appropriate, may then transport the person if the law enforcement officer or mental health professional conducting the transport has probable cause to believe that the person poses a risk of harm to self or others.

(2) Transports conducted pursuant to this subsection shall provide individuals with the same protections as provided to individuals in the custody of the Commissioner who are transported pursuant to section 7511 of this title.

(c) If the judge is satisfied that a physician’s certificate is not available without serious and unreasonable delay, and that probable cause exists to believe that the person is in need of an emergency examination, the judge may order the person to submit to an evaluation by a licensed physician for that purpose.

(d)(1) If necessary, the court may order the law enforcement officer to transport the person to a hospital for an evaluation by a licensed physician to determine if the person should be certified for an emergency examination.

(2) Transports conducted pursuant to this subsection shall provide individuals with the same protections as provided to individuals in the custody of the Commissioner who are transported pursuant to section 7511 of this title.

(e) Authority to transport a person pursuant to this section shall expire if the person is not taken into custody and transported within 72 hours after a warrant is issued by a Superior judge.

(f) A person transported pursuant to subsection (d) of this section shall be evaluated as soon as possible after arrival at the hospital. If after evaluation the licensed physician determines that the person is a person in need of treatment, the licensed physician shall issue an initial certificate that sets forth the facts and circumstances constituting the need for an emergency examination and showing that the person is a person in need of treatment. Once the licensed physician has issued the initial certificate, the person shall be held for an emergency examination in accordance with section 7508 of this title. If the licensed physician does not certify that the person is a person in need of treatment, the licensed physician shall immediately discharge the person and cause the person to be returned to the place from which the person was taken, or to such place as the person reasonably directs. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1977, No. 252 (Adj. Sess.), § 8; 2013, No. 192 (Adj. Sess.), § 6, eff. Nov. 1, 2014; 2023, No. 25, § 1, eff. July 1, 2023.)

judge is satisfied that a physician's certificate is not available without serious and unreasonable delay, and that probable cause exists to believe that the person is in need of an emergency examination, the judge may order the person to submit to an evaluation by a licensed physician for that purpose.” 18 V.S.A. § 7505(c). The determination whether to order an emergency evaluation occurs ex parte so that neither the person subject to the warrant nor that person’s representative would be present at the hearing. Therefore, in this proceeding, they would not be able to consider the judge’s disclosure or consent to waive disclosure, and the Rule 2.11(C) disclosure process would not be possible.²

Conclusion

To avoid any impropriety or appearance of impropriety, a judge whose spouse is involved in a leadership position in the county designated mental health agency should not sign any warrants or participate in proceedings brought by that agency or its employees under 18 V.S.A. § 7505. Because the proceedings are ex parte, there is not an opportunity for disclosure or waiver of the disqualification.

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Thomas Zonay, Chief Superior Judge

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Honorable Thomas A. Zonay

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² If the matter is eventually before the judge in a contested proceeding in which all parties are present, the judge will be able to follow the procedure for disclosure and sit for the case if the parties waive disqualification.