

# Nebraska Ethics Advisory Opinion 03-2

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## ***Question Presented –***

*Is a judge whose adult child is employed by a business which is partly owned by an attorney who regularly practices before the judge disqualified from all cases involving the attorney or only disqualified from cases specifically involving the business which employs the judge's child?*

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## **Conclusion**

The Code of Judicial Conduct does not require recusal from a case involving a lawyer who is a part owner of a business which employs a member of the judge's family.

## **Statement of Facts**

The judge has an adult child who is employed by a business which is partially owned by an attorney who regularly practices before the judge. The business is not related to the practice of law.

## **Applicable Code Sections**

Neb. Code of Jud. Cond., Canons 2 and 3

## **References in Addition to Nebraska Code of Judicial Conduct**

Neb. Rev. Stat. § 24-739 (Reissue 1995)

Nebraska Ethics Advisory Opinion 99-2

Jeffrey M. Shaman et al., *Judicial Conduct and Ethics* (3d ed. 2000)

## **Discussion**

Canon 2 of the Code of Judicial Conduct provides, in part, as follows: "A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities." Subparts A and B of Canon 2 provide that a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary and shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment.

Canon 3 of the Code of Judicial Conduct provides, in part, as follows: "A Judge Shall Perform the Duties of a Judicial Office Impartially and Diligently." Section E of Canon 3 provides that a judge shall not participate in any proceeding in which the judge's impartiality reasonably might be questioned and lists general areas of concern are those where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a 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, or the judge has been a material witness concerning it;

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(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse, parent or child, wherever residing, 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 or has any other more than de minimis interest that could be affected substantially by the proceeding;

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

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be affected substantially by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

Based upon the facts before the Committee in this instance, the relationship described does not violate any Code of Judicial Conduct or statute relating to disqualification. The judge's child, whether a dependent or not, works for a business, non-judicial in nature, partially owned by an attorney who practices before the judge. There is nothing in this relationship that would prevent the judge from hearing cases where the business owner/attorney represents a party unless, of course, the representation involved the specific business owned by the attorney which employs the judge's child. The judge has no business relationship with the attorney and the non-legal business, partially owned by the attorney, who employs the judge's child is not a party to any proceeding before the judge.

Nebraska Code of Judicial Conduct Canon 3E(3) provides:

A judge shall disclose on the record information that the judge believes the parties or their lawyers reasonably might consider relevant to the question of the judge's disqualification, even if the judge believes there is no real basis for disqualification.

Although the committee believes there is no basis for disqualification under the factual scenario presented, the judge, out of extreme caution, could make the disclosure as contemplated by this section of the Code.

As long as the business which employs the judge's child is not involved as a party in a proceeding before the judge, the judge may continue to hear cases involving an attorney who is a part-owner of the business.

## **Disclaimer**

*This opinion is advisory only and is based on the specific facts and questions submitted by*

*the person or organization requesting the opinion pursuant to appendix A of the Nebraska Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Ethics Advisory Committee.*

APPROVED AND ADOPTED  
BY THE COMMITTEE ON AUGUST 19, 2003

*Judge Randall L. Rehmeier  
Judge John F. Irwin  
Judge Graten Beavers  
Judge Douglas F. Johnson  
Judge Stephen R. Illingworth  
Judge John F. Steinheider  
Judge William B. Cassel*