

JUDICIAL ETHICS COMMITTEE

OPINION NO. 99-1

Inquiry has been submitted to the Committee for issuance of an opinion as to whether a judge should recuse herself in all cases involving a certain law firm. An attorney "of counsel" with that firm represents the judge's husband's ex-wife in a domestic relations matter now pending in court. The domestic relations proceeding is described as "acrimonious". The lawyer also actively campaigned against the judge and was reported to be the author of several negative news articles about the judge.

The law firm is now a party in litigation pending before the requesting judge. The issue is whether the judge should recuse herself in this pending litigation and should she recuse herself in all cases in which this law firm appears before her.

Canon 3E of The Code of Judicial Conduct requires disqualification in the following circumstances:

A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or parties lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding.

The issue is not simply one of actual partiality, as recusal is also warranted when a person of ordinary prudence in the judge's position, knowing all the facts known to the judge, would find a reasonable basis for questioning the judge's impartiality. See Alley v. State, 882 S.W.2d 810, 820 (Tenn. Crim. App. 1994); State v. Cash, 867 S.W.2d 741 (Tenn. Crim. App. 1993); and Collier and Hancock v. Griffith and Quarles 1992 Tenn. App. LEXIS 245 (March 11, 1992)("judges are

expected to recuse themselves not only when they are actually biased or prejudiced but also when their impartiality might reasonably be questioned").

It is the opinion of the Committee that given the "acrimonious" nature of the litigation in which the judge's husband is involved and the prior actions of the lawyer¹ related to the election campaign, the judge should recuse herself from all cases involving the particular lawyer or his law firm. This recusal should apply when the law firm is a party, as well as when members of the law firm appear in a representative capacity.

The Committee wishes to emphasize that its decision is fact driven. Often, recusal as to the entire law firm would not be necessary. Here, the facts warrant recusal across the board.

FOR THE COMMITTEE:

WALTER C. KURTZ, JUDGE

CONCUR:

PEAY
FRIERSON
PEETE
WAGGONER

APRIL 28, 1999

¹Under the facts here, the "of counsel" relationship of the lawyer to the firm would not affect the application of Canon 3E. The relationship between the lawyer and the firm is substantial.