

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 04 – 2024

RE: Propriety of a family court judge presiding over cases where one of the attorneys was reported to the Office of Disciplinary Counsel by the judge as part of another case.

FACTS

Recently, a family court judge had to report a lawyer to the Office of Disciplinary Counsel for misconduct. The judge now inquires if the judge must recuse himself/herself from presiding in any case in which the lawyer represents a party.

CONCLUSION

A family court judge should recuse himself/herself from presiding over cases in which one of the attorneys is a person the judge reported for misconduct.

OPINION

Rule 3E(1)(a) states that “[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 the judge has a personal bias or prejudice concerning a party or a party's lawyer....” While the judge may not have a personal bias, the rule is not solely limited to such bias, and certainly, reporting an attorney as required by Canon 3D(2) could be construed (even if it is entirely warranted) as bias if known to the parties and their counsel.

However, in the case of disciplinary proceedings, certain proceedings are confidential. For example, if it is determined that the complaint does not allege conduct that, if true, would violate the Rules of Professional Conduct, it will be dismissed without notice to the attorney. Rule 19(a), RLDE, Rule 413, SCACR. Should the matter progress, the lawyer will receive a notice of investigation, including the initial complaint, and a request for a response. *Id.* However, the notice

of investigation and initial complaint (and the attorney's response) are not available to the public. Thus, the only person that could question the judge's impartiality would be the attorney, and the attorney would have to reveal the investigation into his/her conduct, an act that the lawyer is not likely to want to do. Yet, if the matter was public, the judge's impartiality would or could be called into question. Therefore, it would seem that the best course of action is for the judge to recuse himself/herself from presiding over matters in which the attorney appears.

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES, CHAIR

s/ William H. Seals, Jr.
WILLIAM H. SEALS, JR.

s/ Ariail E. King
ARIAIL E. KING

June 10, 2024