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The Commission on Judicial Conduct (CJC) is separate from the EAC. The CJC is a constitutionally-created, independent agency of the judicial branch of state government which enforces the Code of Judicial Conduct, pursuant to WA State Const. Art IV, §31. Although EAC opinions are not binding on the CJC, a judge's compliance with an opinion by the EAC shall be considered as evidence of the judge's good faith. GR 10(b). The CJC has a searchable website at www.cjc.state.wa.us.

STATE OF WASHINGTON
ETHICS ADVISORY COMMITTEE
OPINION 12-2

Question

Does a judicial officer's obligation under CJC 2.11(B), which states that a judicial officer shall make reasonable efforts to keep informed about the personal economic interests of the judicial officer's spouse, extend to affirmatively making inquiries of (1) the attorney/spouse's clients and (2) the clients of the attorney/spouse's law firm?

Does CJC 2.11(A)(2)(c) require a judicial officer to recuse in a case where the law firm of the judicial officer's attorney/spouse has represented a party, but not in the matter before the judicial officer, and the attorney/spouse has represented one of the parties in matters unrelated to the case before the judicial officer?

The judicial officer heard a summary judgment motion in a personal injury case (negligence and wrongful death) and ruled in favor of the defendant school district on the motion.

After the ruling, plaintiff's counsel brought to the judicial officer's attention the fact that the judicial officer's attorney/spouse is a member of a law firm that has a "school law practice group" and that the judicial officer's attorney/spouse represents school districts (including the defendant) in real estate and land use matters. The information presented came from the law firm's public Web site and the judicial officer's PDC filings (i.e., Web site where the attorney/spouse's law firm and the judicial officer's PDC filing listing the defendant as a public entity that had paid more than \$10,000 to the attorney/spouse's law firm in the calendar year).

The public Web site of the attorney/spouse's law firm does not list any clients of the law firm. The plaintiff's counsel also submitted a 2011 "Roster of School Law Attorneys" that lists the attorney/spouse as doing real estate and land use work for school districts and lists five school districts that the attorney/spouse has done work for, including the defendant school district. The judicial officer is not familiar with the "roster" and does not know if it is a public document and no information was provided in the document before its presentation by plaintiff's counsel.

Answer

CJC 2.11(B) provides in pertinent part that a judge shall make a reasonable effort to keep informed about the personal economic interests of the judge's spouse. "Economic interest" is defined in CJC Terminology as meaning ownership of more than a de minimis legal or equitable interest.

Based on the representations above, CJC 2.11(B) does not require the judicial officer to affirmatively make inquiries into the attorney/spouse's clients and the clients of the attorney/spouse's law firm as to the parties appearing before a judge unless there is an independent circumstance which would cause the judicial officer to believe that such an inquiry should be conducted.

If the judicial officer learns that his or her spouse's firm represents and/or has represented one of the parties in the proceeding, the judicial officer should disclose that on the record when he or she becomes aware of that relationship. Absent independent circumstances requiring disqualification, the judicial officer may continue to preside over the matter.

CJC 2.11(A)(2)(c) requires a judicial officer to disqualify in cases in which the judicial officer's spouse has more than a de minimis economic interest that could be substantially affected by the outcome in the proceeding. The facts outlined in this opinion do not meet that threshold because the attorney/spouse has no economic interest in the outcome of this proceeding, therefore, there is no requirement that the judicial officer recuse.