



Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr. Chairman
Hon. Thomas A. Donnelly
Prof. William T. MacPhearson, Jr.
Hon. Marie Baca

July 27, 1995

The Honorable
District Judge

Re: Judicial Advisory Opinion 95-04

Dear Judge

The Committee is in receipt of your letter dated June 29, 1995. You have requested an advisory opinion concerning whether it would be appropriate for you to hear cases that come before you as a district court judge when your former law partner represents one or more of the litigants. For the reasons set forth below, we believe, absent an express waiver of all parties in such cases, you are required to recuse yourself.

According to your letter, you discontinued your law practice with your former law partner when you were admitted to the bench_____. Your letter also indicates that the professional corporation which you were a shareholder was not dissolved until _____

SCRA 1986, 21-400(A) (Advance Annotation & Rules Serv. Apr. 1995), which took effect February 16, 1995, is applicable to your question and states in pertinent part:

Recusal. A judge is disqualified and shall recuse 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 served as 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.

We believe this Canon requires that you recuse yourself from any cases in which your former law partner appears on behalf of clients who were represented by your former partnership or

professional corporation prior to its dissolution. Also, since your association with the partnership or professional corporation under which you practiced was not terminated until three years after you took the bench, we believe that none of the cases which were worked on by your former law partner on behalf of the partnership or professional corporation should be heard by you unless an express waiver of the litigants is obtained.

Regarding any other cases which may come before you wherein your former law partner is an attorney of record, SCRA 1986, 21-200 (Advance Annotation & Rules Serv. Apr. 1995) is applicable and states that a judge must avoid impropriety and the appearance of impropriety. In a prior advisory opinion (see Judicial Advisory Op. No.89-6), we considered how long a judge should wait before handling a case represented by a former partner or associate in order to avoid the appearance of impropriety. In that opinion, we stated that it would be improper for a judge to hear cases represented by a former partner so long as the judge maintains financial dealings with that partnership.

Your letter indicates that while the accounts of the dissolved partnership or corporation have been settled, you remain a business associate with your former law partner in the ownership of an office building. It is our view that under Canon 21-200, you should recuse yourself from all cases handled by your former law partner for so long as your joint financial dealings continue. We also refer you to SCRA 1986, 21-500(D)(4), which provides guidance as to how a judge should manage his or her financial affairs to avoid disqualification. As we determined in our previous opinion, five years would be a reasonable time to wait before you should hear any cases of the former law partner once all financial dealings have been resolved. See Judicial Advisory Op. No.89-6.

As an alternative to recusal in cases wherein your former law partner is counsel of record or so long as you remain a business associate, we believe it would be appropriate for you to make full disclosure of your relationship with your former law partner to all interested parties in order to determine whether they are willing to waive any objection to your hearing the case. See Judicial Advisory Op. No.94-06. If such waiver is obtained and entered of record, you could properly preside in such cause.

Very truly yours,

Frank H. Allen, Jr.,
Chairman, Judicial Advisory Committee