

Nebraska Ethics Advisory Opinion 96-5

Question Presented--

A judge, who has jurisdiction in certain civil matters in which his first cousin has a possible financial interest, states that he would be compelled to disqualify himself if the matter came to trial. Must the judge also disqualify himself from hearing a motion for default judgment?

Conclusion

A judge must recuse himself from hearing a motion for default judgment if a family relationship would require his disqualification from presiding at a trial. Recusal would be necessary in a case where the judge has a disqualifying family relationship, even in the instance of a motion for default judgment.

Applicable Code Sections

CANON 2

A Judge Shall Avoid Impropriety
and the Appearance of Impropriety in all of
the Judge's Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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CANON 3

A Judge Shall Perform the Duties
of Judicial Office Impartially and Diligently

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E. DISQUALIFICATION.

(1) A judge shall not participate in any proceeding in which the judge's impartiality reasonably might be questioned, including but not limited to instances where:

.....

(d) the judge or a 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.

Discussion

The question presented states that the judge acknowledges the existence of a conflict requiring his recusal if the case were tried. Without analyzing whether the facts presented require recusal, if the judge has an ethical conflict sufficient to disqualify him from the matter if tried, he necessarily has a conflict in hearing a motion for default judgment. Even though it is by default, the judge enters a judgment for a party that is signed by the judge. To the community, this appears to be a finding in favor of the prevailing party and an entry of judgment for the prevailing party. Further, a judge hearing a motion for default judgment is not acting in a purely ministerial fashion. The judge exercises some control and discretion over the proceeding. Moreover, the judge may be asked at a later date to set aside the default judgment. At a minimum, there would be an appearance of impropriety if the judge who did not initially recuse himself from the hearing on entering a default judgment, suddenly felt compelled to recuse himself once a request is made to set aside his judgment. The appearance of impropriety requires a judge to recuse himself from all aspects of the case in which he would have a clear conflict if the matter went to trial.

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 NOVEMBER 13, 1996

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