

Wyoming Supreme Court Judicial Ethics Advisory Committee W.S.C.J.E.A.C. Advisory Opinion 2019-01

QUESTION PRESENTED

Can a circuit court judge's spouse volunteer as a staff member of the Visitation and Advocacy Center (also known as CASA) and advocate on behalf of children in the juvenile court system and domestic violence protection order cases, without creating a violation of the Code of Judicial Conduct?

RESPONSE

The Committee answers yes to the question presented, under limited circumstances.

BACKGROUND

The requesting judge's spouse would like to volunteer as a Court Appointed Special Advocate (CASA) worker in the judicial district in which the judge presides. CASA workers meet with children in the juvenile court system, getting to know the children and their needs and speaking on their behalf as necessary in court. Their duties include information gathering and reporting, attendance at court hearings and Multidisciplinary Team meetings, reviewing Department of Family Services and court records, and making the child's wishes known to the parties. CASA volunteers also advocate for children in circuit court domestic violence protection order cases in which custody and visitation are at issue. Volunteer CASA workers are unpaid positions but receive reimbursements for actual expenses incurred. The requesting judge's spouse is not an attorney and would not act as legal counsel or as a court-appointed guardian ad litem. The judge's spouse will not act in any supervisory capacity over any other CASA volunteers or staff. In juvenile court matters, CASA is not involved in a particular case until the juvenile court judge enters an order appointing CASA pursuant to Rule 8(c) of the Rules of Procedure for Juvenile Courts.

The requesting judge hears family violence protection order cases and at times utilizes the services of CASA to fashion custody and visitation orders and to facilitate visitation. It is unknown to this committee how or at what stage CASA becomes involved in family violence or stalking protection order cases. While acting as a district court commissioner, the judge may also, at times, rely on CASA for similar assistance in child abuse and neglect actions in juvenile court. The judge's inquiry states that the spouse's volunteer activities would not occur in any case over which the judge presides, and that the judge would not engage in any public events or fundraising activities of CASA.

APPLICABLE RULES OF THE WYOMING CODE OF JUDICIAL CONDUCT

Canon 1 of the Wyoming Code of Judicial Conduct provides:

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2 provides that:

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.3 provides that:

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or knowingly allow others to do so.

Canon 2 of the Wyoming Code of Judicial Conduct provides:

A judge shall perform the duties of judicial office impartially, competently and diligently.

Rule 2.2 provides that:

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Rule 2.3 provides in relevant part that:

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

Rule 2.4 provides in relevant part that:

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

DISCUSSION

The question posed is quite similar to the one addressed by this committee in Advisory Opinion 2018-02. There, the Committee was asked to advise whether the Rules of Judicial Conduct would prevent a circuit court judge's spouse from accepting

a job as the head administrator of an organization that assists victims of domestic violence and whose advocates attend domestic violence hearings before the circuit court with those victims. The judge's spouse, as head administrator of the organization, would not attend hearings as an advocate for victims or speak on behalf of victims. The primary difference in this case is that the judge's spouse would appear in an advocacy role in court hearings, albeit not in any cases over which the judge presides. As a result, much of the analysis and reasoning contained in Advisory Opinion 2018-02 is applicable here and will be repeated. Additional concerns are addressed as necessary.

As stated in Advisory Opinion 2018-02, the ethics rules contained in the Code of Judicial Conduct regulate only judges. The rules do not apply to, restrict, or govern spouses of judges, and the rules do not prohibit a spouse from advancing a career or engaging in worthwhile volunteer activities. Nevertheless, the actions of a spouse can, in certain circumstances, cause ethical issues to arise.¹

The evaluation this Committee must undertake revolves around the impact caused to the judge or the judiciary by the spouse's acceptance of a position which creates real or perceived problems with judicial impartiality and external influences upon the judge. Cumulatively, the Rules set forth above address two separate, but interrelated issues: 1) the public's perception of the judiciary, and 2) acts of impropriety by judges. Rules 1.2, 1.3 and 2.4(C) primarily focus on protecting the public's perception of judges, while Rules 2.2, 2.3(A) and 2.4(B) primarily address the judge's own actions. We will address the two issues separately below.

Public Confidence in the Judiciary. Judges are required to promote "public confidence" and "avoid impropriety and the appearance of impropriety." (Rule 1.2). To foster this public confidence, judges are prevented from abusing "the prestige of judicial office to advance the personal or economic interests of the judge or others, or knowingly allow others to do so." (Rule 1.3). Further, judges are also prohibited from "convey[ing] or permit[ting] others to convey the impression that any person or organization is in a position to influence the judge." (Rule 2.4(C)). The comment to Rule 2.4 reads as follows:

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. *Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences* (emphasis added).

¹ The National CASA Association has adopted Standards for Local CASA/GAL Programs which set forth ethical rules to prevent or limit conflict of interest by CASA volunteers. Rule 8 of the Wyoming Rules of Procedure for Juvenile Courts requires that local CASA programs in Wyoming comply with the National CASA Association Standards. While the purpose of this opinion is not to advise the spouse on ethical conduct, the CASA standards do impose conflict of interest restrictions on volunteers and may serve as an additional mechanism to preserve the integrity of the process by guarding against conflicts.

In this matter, while we have concern, this Committee does not believe that the spouse's activities as a volunteer CASA advocate, in and of itself, create an inherent violation of the rules protecting against the appearances of impropriety. Rather, we believe that it is the conduct and interactions, including public, private and professional between the judge and the spouse that may give rise to violations of said rules. For example, a violation of Rule 1.3 would occur if the judge sent a letter of recommendation for the spouse on judicial letterhead, or if the judge attempted to impact the organization's hiring process through promises of supporting the organization's goals and policies. A violation of Rule 1.2 and 2.4(C) most certainly would occur if the spouse attends domestic violence or juvenile court hearings as an advocate in any case over which the judge presides. However, it is the committee's understanding that the spouse in this case will not appear in any proceeding over which the requesting judge presides. A violation might also occur should the judge attend or participate in CASA public events or fundraising activities. Again, however, it is the Committee's understanding that the judge will not attend or participate in such activities.

In our small, rural communities of Wyoming, there is always some family or friend nexus that may give rise to a plausible suggestion of partiality. We do not believe that avoiding every plausible suggestion of partiality is the rule; otherwise, judges should be prohibited from having family and friends altogether. In this matter, the committee believes that the requesting judge can avoid an appearance of partiality if the judge and spouse are mindful and prudent to preserve the judge's actual and perceived independence from the influence of the spouse as a volunteer for CASA.

Acts of Impropriety. Judges shall "perform all duties of judicial office fairly and impartially" (Rule 2.2) and shall perform such duties "without bias or prejudice" (Rule 2.3(A)). In addition, "a judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment" (Rule 2.4(B)). This Committee has no doubt that judges, in general, can faithfully follow the rules governing judicial action and exercise and preserve their independence and judgment, regardless of their spouse's volunteer activities. However, at this time, only the requesting judge in this matter can subjectively determine whether the spouse's volunteer activities will cause, or are likely to cause, prohibited partiality or bias in the performance of that judge's duties. While we find that the requesting judge will not be in automatic violation of Rules 2.2, 2.3(A) or 2.4(B) if the spouse becomes a CASA volunteer, the judge must remain vigilant and mindful that such violations do not occur because of the spouse's position or influence.

CONCLUSION

In the event the requesting judge's spouse becomes a CASA volunteer advocate, the requesting judge should not preside over any cases in which the spouse is in any way involved as a CASA volunteer. In the event the spouse's CASA involvement includes providing information, guidance or counseling to any person who is involved, or may become involved, in family violence or stalking protection cases, the requesting

judge should cease presiding over all domestic violence cases in the circuit court in order to ensure compliance with Rule 1.2. So long as the requesting judge's spouse is not involved in any way in any case in which the judge presides, we believe that the requesting judge may continue to preside over domestic violence cases in the circuit court and juvenile hearings in the district court. Due to the narrow facts we received from the requesting Judge, this Committee's limited understanding of CASA's activities in that specific community, and this Committee's limited understanding of the spouse's specific volunteer activities with CASA, we are concerned that this situation creates a minefield of potential issues that this Committee is unable to predict or advise upon. In addition to the concerns expressed herein, we believe that it is prudent to make the following additional advisements:

1. The requesting judge should not discuss with the spouse any cases in which the spouse may be involved as a CASA volunteer, nor should the judge discuss with the spouse any other case over which he presides in which someone from CASA is involved.
2. The requesting judge should not participate in or attend CASA events or activities.
3. The requesting judge should advise the spouse not to promote or comment upon the spouse's marriage or relationship with the judge in the course of the volunteer interview and application process or in any aspect of the performance of the spouse's volunteer duties with CASA.

FINALIZED AND EFFECTIVE this 8th day of July, 2019 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.