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Family Ethical Issues 2022

A judge whose spouse is an administrative assistant in the state attorney's office is not disqualified from all criminal cases prosecuted by that office and is not required to disclose their spouse's employment. The judge is not required to disqualify themselves from cases in which their spouse has notarized an information/indictment but must disclose the relationship.

[Florida Advisory Opinion 2021-18.](#)

A judge who is married to the local conflict defender is disqualified from all cases in which employees from that office appear subject to remittal in cases in which their spouse will not personally appear in the courtroom. [New York Advisory Opinion 2021-125.](#)

When a judge's spouse supervises assistant county attorneys in family court neglect and abuse cases and a criminal case before the judge has material and relevant connections to a family court neglect and abuse case: (a) if the judge's spouse is directly involved or supervised assistant county attorneys in the related case, the judge must disclose the connection and their spouse's role, but need not disqualify; and (b) if the judge is satisfied that their spouse has no supervisory or direct involvement in the "related" family court case, the judge may preside without disclosure. [New York Advisory Opinion 2020-211.](#)

A judge whose first-degree relative heads a law enforcement agency is disqualified from all matters involving the agency, including matters where the judge concludes the agency or its personnel have been or will likely be involved. Remittal is not permitted. While the judge is not required to actively inquire or take other extraordinary measures in every criminal matter, the judge must adopt reasonable procedures to avoid presiding over matters involving the agency, such as making a reasonable inquiry if the judge suspects the agency was or may become involved in a particular matter. [New York Advisory Opinion 2021-15.](#)

A town justice whose spouse is the mayor of a village within the town is disqualified, without the possibility of remittal, from matters in which their spouse is expected to testify or is a named party, and is disqualified, subject to remittal, from matters in which the village is a named party, but is not disqualified from other cases merely because village employees will

appear. When the judge's spouse as village mayor serves ex officio on a body of commissioners for the village police department, but is not the head of the department and has no day-to-day administrative, supervisory, or law enforcement responsibilities, the judge is not disqualified from cases involving the village police department due solely to their spouse's formal status as a police commissioner. [New York Advisory Opinion 2021-101](#).

A judge is not per se disqualified when members of their relative's law firm appear in a case. The judge must make a case-by-case determination whether they are disqualified. If the facts would disqualify the judge but the parties agree to waive the disqualification, the judge may remain on the case. [North Dakota Advisory Opinion 2021-1](#).

A judge who is married to a lieutenant in a university's department of public safety should not preside over cases arising from the department in which their spouse appears as a material witness. In other proceedings involving the department, the judge must disclose their spouse's position on the record and allow the parties to determine whether to seek recusal. [South Carolina Advisory Opinion 13-2021](#).

A family court judge whose first cousin is the director of the Department of Social Services in a county within the judge's circuit may preside over DSS matters. [South Carolina Advisory Opinion 9-2021](#).

A judge is disqualified from any matter involving their stepdaughter who is a counsel for the local child advocacy center and should disclose the relationship in all cases involving the center. [West Virginia Advisory Opinion 2020-27](#).

An appointed judge whose second-degree relative is incarcerated or on parole for a sex offense may preside in other sex offense cases and need not disclose that fact to the parties. The judge is not required to disclose their relative's status to the appointing authority and may be a housing resource for their relative, but may not use the prestige of judicial office to advance the relative's parole release conditions or other private interests. [New York Advisory Opinion 2021-146](#).

A judge may hold shares in a family-held limited liability company that owns real estate and may participate in management of the company's real estate investment, but must not manage, operate, or otherwise actively participate in a family-held bar that operates on the company's real estate. [New York Advisory Opinion 2021-154](#).

Unless the judge is the current presiding judge or assistant presiding judge when the judge's child applies for the pro tem appointment, a superior court judge's child may be included on a pro tem commissioner and pro tem judge list for the superior court if the judge would not be involved in deciding whether the judge's child will be included on the list, in determining when the judge's child will be called on to pro tem, in deciding revision motions based on a ruling made by the child as a pro tem commissioner, and in supervising the child in their role as a pro tem. [Washington Advisory Opinion 2021-3](#).

A judge may not participate in a proposed not-for-profit corporation that would be controlled by the judge's family and would feature the judge as its sole compensated lecturer with a sliding scale of fees. *New York Advisory Opinion 2020-200* (<https://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/20-200.htm>).

A judge whose spouse is running for governor may attend fund-raisers on their behalf but only if it is held outside the marital home; cannot appear in a parade with the spouse; and cannot introduce them or speak about them at campaign events. The judge's name and photograph may appear in their spouses' campaign literature or other official campaign photographs if they are not identified as a judge. *West Virginia Advisory Opinion 2019-22*.

A family division judge may speak on subjects related to family law on a podcast hosted by their spouse, for which the spouse receives compensation from a sponsor, provided the number of appearances by the judge is limited and their comments are purely informational, do not constitute legal advice, and do not include commentary on pending cases or legal controversies. A judge may not post a congratulatory message on LinkedIn when a book written by the judge's spouse is released. *Florida Advisory Opinion 2021-14* (<https://www.jud6.org/LegalCommunity/LegalPractice/opinions/jeacopinions/2021/2021-14.html>).

A judge may attend, as a guest of their spouse, a multi-day annual conference attended solely by prosecutors, located in a different part of the state from where they preside, and may attend the association's annual dinner, a social event at which the only business conducted is the installation of new officers. *New York Advisory Opinion 2021-95*.

The Texas State Commission on Judicial Conduct publicly reprimanded a judge for (1) producing and erected signs advertising his wife's campaign for county commissioner, discussing her candidacy with others at campaign events and elsewhere, and maintaining a Facebook page on which materials supporting his wife's campaign appeared, in addition to other misconduct; the Commission also ordered that he receive 2 hours of instruction with a mentor on campaign ethics, conflicts of interest, and performing magistrations. *Public Reprimand of Alvarez and Order of Additional Education* (Texas State Commission on Judicial Conduct October 29, 2021).

Accepting [a stipulation](#) based on the judge's affirmation that he has vacated his office and will not seek or accept judicial office in the future, the New York State Commission on Judicial Conduct has concluded a proceeding against a former non-lawyer judge; in October 2019, the Commission had filed a complaint alleging that the judge had threatened the life of a Black town employee who was in a romantic relationship with the judge's White daughter, used a racial epithet when discussing the man on multiple occasions, and repeatedly expressed views opposing interracial marriage. *In the Matter of Sucher, Decision and order* (New York State Commission on Judicial Conduct October 28, 2021).