

Rule 8.110 Chief Judge Rule

(A) Applicability. This rule applies to all trial courts: i.e., the judicial circuits of the circuit court, the districts of the district court, the probate court in each county or a probate district established by law, and the municipal courts.

(B) Chief Judge, Chief Judge Pro Tempore, and Presiding Judges of Divisions.

(1) The Supreme Court shall select a judge of each trial court to serve as chief judge. No later than October 1 of each odd-numbered year, each trial court with two or more judges may submit the names of no fewer than two judges whom the judges of that court recommend for selection as chief judge.

(2) Unless a chief judge pro tempore or presiding judge is named by the Supreme Court, the chief judge shall select a chief judge pro tempore and a presiding judge of any division of the trial court. The chief judge pro tempore and any presiding judges shall fulfill such functions as the chief judge assigns.

(3) The chief judge, chief judge pro tempore, and any presiding judges shall serve a two-year term beginning on January 1 of each even-numbered year, provided that the chief judge serves at the pleasure of the Supreme Court and the chief judge pro tempore and any presiding judges serve at the pleasure of the chief judge.

(4) Where exceptional circumstances exist, the Supreme Court may appoint a judge of another court to serve as chief judge of a trial court.

(C) Duties and Powers of Chief Judge.

(1) A chief judge shall act in conformity with the Michigan Court Rules, administrative orders of the Supreme Court, and local court rules, and should freely solicit the advice and suggestions of the other judges of his or her bench and geographic jurisdiction. If a local court management council has adopted the by-laws described in AO 1998-5 the chief judge shall exercise the authority and responsibilities under this rule in conformity with the provisions of AO 1998-5.

- (2) As the presiding officer of the court, a chief judge shall:
- (a) call and preside over meetings of the court;
 - (b) appoint committees of the court;
 - (c) initiate policies concerning the court's internal operations and its position on external matters affecting the court;
 - (d) meet regularly with all chief judges whose courts are wholly or partially within the same county;
 - (e) represent the court in its relations with the Supreme Court, other courts, other agencies of government, the bar, the general public, and the news media, and in ceremonial functions;
 - (f) counsel and assist other judges in the performance of their responsibilities; and
 - (g) cooperate with all investigations conducted by the Judicial Tenure Commission.
- (3) As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to:
- (a) supervise caseload management and monitor disposition of the judicial work of the court;
 - (b) direct the apportionment and assignment of the business of the court, subject to the provisions of MCR 8.111;
 - (c) determine the hours of the court and the judges; coordinate and determine the number of judges and court personnel required to be present at any one time to perform necessary judicial administrative work of the court, and require their presence to perform that work;
 - (d) supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any;
 - (e) coordinate judicial and personnel vacations and absences, subject to the provisions of subrule (D);
 - (f) supervise court finances, including financial planning, the preparation and presentation of budgets, and financial reporting;
 - (g) request assignments of visiting judges and direct the assignment of matters to the visiting judges;
 - (h) effect compliance by the court with all applicable court rules and provisions of the law; and
 - (i) perform any act or duty or enter any order necessarily incidental to carrying out the purposes of this rule.

(4) If a judge does not timely dispose of his or her assigned judicial work or fails or refuses to comply with an order or directive from the chief judge made under this rule, the chief judge shall report the facts to the state court administrator who will, under the Supreme Court's direction, initiate whatever corrective action is necessary.

(5) The chief judge of the court in which criminal proceedings are pending shall have filed with the state court administrator a quarterly report listing the following cases in a format prescribed by the state court administrator:

(a) felony cases in which there has been a delay of more than 301 days between the order binding the defendant over to circuit court and adjudication;

(b) misdemeanor cases and cases involving local ordinance violations that have criminal penalties in which there has been a delay of more than 126 days between the date of the defendant's first appearance on the warrant and complaint or citation and adjudication;

(c) In computing the 126-day and 301-day periods, the court shall exclude periods of delay

(1) between the time a preadjudication warrant is issued and a defendant is arraigned;

(2) between the time a defendant is referred for evaluation to determine whether he or she is competent to stand trial and the receipt of the report; or

(3) during the time a defendant is deemed incompetent to stand trial.

(6) A chief judge may delegate administrative duties to a trial court administrator or others.

(7) Where a court rule or statute does not already require it, the chief judge may, by administrative order, direct the clerk of the court to provide litigants and attorneys with copies of forms approved by the state court administrator. In addition, except when a court rule or statute specifies that the court or clerk of the court must provide certain forms without charge, the administrative order may allow the clerk to provide the forms at the cost of reproduction to the clerk.

(D) Court Hours; Court Holidays; Judicial Absences.

(1) Court Hours. The chief judge shall enter an administrative order under MCR 8.112(B) establishing the court's hours.

(2) Court Holidays; Local Modification.

(a) The following holidays are to be observed by all state courts, except those courts which have adopted modifying administrative orders pursuant to MCR 8.112(B):

(a) The following holidays are to be observed by all state courts, except those courts which have adopted modifying administrative orders pursuant to MCR 8.112(B):

New Year's Day, January 1;

Martin Luther King, Jr., Day, the third Monday in January in conjunction with the federal holiday;

Presidents' Day, the third Monday in February;

Memorial Day, the last Monday in May;

Independence Day, July 4;

Labor Day, the first Monday in September;

Veterans' Day, November 11;

Thanksgiving Day, the fourth Thursday in November; Friday after Thanksgiving;

Christmas Eve, December 24;

Christmas Day, December 25;

New Year's Eve, December 31;

(b) When New Year's Day, Independence Day, Veterans' Day, or Christmas Day falls on Saturday, the preceding Friday shall be a holiday. When New Year's Day, Independence Day, Veterans' Day, or Christmas Day falls on Sunday, the following Monday shall be a holiday. When Christmas Eve or New Year's Eve falls on Friday, the preceding Thursday shall be a holiday. When Christmas Eve or New Year's Eve falls on Saturday or Sunday, the preceding Friday shall be a holiday.

(c) Courts are encouraged to promulgate a modifying administrative order if appropriate to accommodate or achieve uniformity with the holiday practices of local governmental units regarding local public employees.

(d) With the prior approval of the chief judge, a judge may continue a trial in progress or dispose of judicial matters on any of the listed holidays if he or she finds it to be necessary.

(e) Any action taken by a court on February 12, Lincoln's birthday, or on the second Monday in October, Columbus Day, shall be valid.

(3) Judicial Vacation Standard. A judge is expected to take an annual vacation leave of 20 days with the approval of the chief judge to ensure docket coordination and coverage. A judge may take an additional 10 days of annual vacation leave with the approval of the chief judge. A maximum of 30 days of annual vacation unused due to workload constraints may be carried from one calendar year into the first quarter of the next calendar year and used during that quarter, if approved by the chief judge. Vacation days do not include:

- (a) attendance at Michigan judicial conferences;
- (b) attendance, with the chief judge's approval, at educational meetings or seminars;
- (c) attendance, with the chief judge's approval, at meetings of judicial committees or committees substantially related to judicial administration of justice;
- (d) absence due to illness; or
- (e) administrative leave, with the chief judge's approval.

(4) Judicial Education Leave Standard. A judge is expected to take judicial education leave of 2 weeks every 3 years to participate in continuing legal education and training at Michigan judicial training programs and nationally recognized judicial education programs, including graduate and refresher courses. Judicial education leave does not include judicial conferences for which attendance is required. The use of judicial education leave approved by the chief judge does not affect a judge's annual leave.

(5) Judicial Professional Leave Standard. Judges are encouraged, as part of their regular judicial responsibilities, to participate in professional meetings and conferences that advance the administration of justice or the public's understanding of the judicial system; to serve on commissions and committees of state and national organizations that contribute to the improvement of the law or that advance the interests of the judicial system; and to serve on Supreme Court-appointed or in-house assignments or committees. The use of judicial professional leave approved by the chief judge does not affect a judge's annual leave or education leave.

(6) Approval of Judicial Absences. A judge may not be absent from the court without the chief judge's prior approval, except for personal illness. In making the decision on a request to approve a vacation or other absence, the chief judge shall consider, among other factors, the pending caseload of the judge involved. The chief judge shall withhold approval of vacation, judicial education, or judicial professional leave that conforms to these standards only if withholding approval is necessary to ensure the orderly conduct of judicial business. The chief judge shall maintain records of absences to be available at the request of the Supreme Court.

ADMINISTRATIVE ORDER NO.1996-11

Hiring of Relatives by Courts

In order to ensure that the Michigan judiciary is able to attract and retain the highest quality work force, and make most effective use of its personnel, it is ordered that the following anti-nepotism policy is effective December 1, 1996, for all courts of this state.

1. Purpose

This anti-nepotism policy is adopted to avoid conflicts of interest, the possibility or appearance of favoritism, morale problems, and the potential for emotional interference with job performance.

2. Application

This policy applies to all full-time and part-time non-union employees, temporary employees, contractual employment, including independent contractors, student interns, and personal service contracts. This policy also applies to all applicants for employment regardless of whether the position applied for is union or non-union.

3. Definitions

a) As used in this policy, the term "Relative" is defined to include spouse, child, parent, brother, sister, grandparent, grandchild, first cousin, uncle, aunt, niece, nephew, brother-in-law, sister-in-law, daughter-in-law, son-in-law, mother-in-law, and father-in-law, whether natural, adopted, step or foster.

b) As used in this policy, "State Court System" is defined to include all courts and agencies enumerated in Const 1963, art 6, §1 and the Revised Judicature Act of 1961, MCL 600.101 et seq.; MSA 27A.101 et seq.

c) As used in this policy, the term "Court Administrator" is defined to include the highest level administrator, clerk or director of the court or agency who functions under the general direction of the chief justice or chief judge, such as, state court administrator, agency director, circuit court administrator, friend of

the court, probate court administrator, juvenile court administrator, probate register and district court administrator/clerk.

4. Prohibitions

a) Relatives of justices, judges or court administrators shall not be employed within the same court or judicial entity. This prohibition does not bar the assignment of judges and retired judges by the Supreme Court to serve in any other court in this state for a limited period or specific assignment, provided those assigned shall not participate in any employment related matters or decisions in the court to which they are assigned.

b) Relatives of employees not employed as justices, judges or court administrators shall not be employed, whether by hire, appointment, transfer or promotion, in any court within the state court system (i) where one person has any degree of supervisory authority over the other, whether direct or indirect; (ii) where the employment would create favoritism or a conflict of interest or the appearance of favoritism or a conflict of interest; or (iii) for reasons of confidentiality.

c) Should two employees become relatives by reason of marriage or other legal relationship after employment, if possible, one employee shall be required to transfer to another court within the state court system if the transfer would eliminate the violation. If a transfer is not possible or if the violation cannot be eliminated, one employee shall be required to resign. The decision as to which employee shall transfer or resign may be made by the employees. If the employees fail to decide between themselves within thirty days of becoming relatives, the employee with the least seniority shall be required to transfer or resign. However, if one of the two employees holds an elective office, is a judge or is covered by a union contract, the other employee shall be required to transfer or resign.

5. Required Submissions

If any person, whether employed by hire, appointment, or election, contemplates the creation of a contractual relationship that may implicate this policy, whether directly or [Revised 3/99]indirectly, the proposed contract shall be submitted to the State Court Administrative Office for review to ensure compliance with this policy.

6. Required Disclosure

All current employees, including persons who are elected or appointed, shall disclose in writing to the State Court Administrative Office the existence of any familial relationship as described in this policy within thirty (30) days of the issuance of this policy or creation of the relationship, whichever is sooner.

7. Affected Employees

This policy shall not apply to any person who is an employee of the state court system on December 1, 1996, except that from December 1, 1996, forward, no person shall be transferred or promoted or enter into a nepotism relationship in violation of this policy.

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July 21, 1989

SYLLABUS

1. Lawyer spouses may represent clients whose positions are adverse only if the clients are informed of the relationship and consent to the representation.

A lawyer may represent a client where the adverse party is represented by the lawyer's spouse's law firm, but if the relationship between the spouses and all attendant facts result in any of the lawyers having a personal interest in the outcome of the litigation then that interest must be disclosed to the clients and the clients must consent to the representation.

Law firms of lawyer spouses may represent clients with adverse interests, and need disclose the existence of the marital relationship between lawyers in the two firms only if the facts indicate that that relationship has given the lawyers handling the case a personal interest in the outcome of the litigation.

2. A judge is disqualified from presiding over a case where his or her spouse appears as an advocate for either party.

A judge is disqualified from presiding over a case where the law firm of the judge's spouse appears as an advocate for either party, unless the parties request the judge to continue presiding in the case after disclosure of the relationship and consultation.

3. Where lawyers are cohabiting, or a lawyer and a judge are cohabiting, the rules regarding married lawyers should be adhered to because the cohabitation relationship is akin in terms of intimacy, confidentiality, and shared interest to the marital relationship.

4. Where lawyers are dating and representing adverse parties, or a lawyer is dating the judge hearing the matter, the lawyers must disclose the relationship to their

clients if the relationship is sufficiently close that the clients would possibly consider its existence to be prejudicial to the impartial administration of justice.

References: MRPC 1.7 and 1.8(i); MCJC 2A, 2C; MCR 2.003(B)(5); CI-605. CI-65, CI-340, CI-607, and CI-803 are superseded. CI-1130 is superseded to the extent inconsistent with this opinion.

TEXT

The Committee has been asked to provide guidance in the area of potential conflicts involving lawyer spouses. The increase in the number of married couples where both spouses are practicing law can give rise to numerous situations in which the potential for conflict of interest may exist or may be thought to exist. For analytical purposes, it is useful to consider three possible situations which are likely to arise. These three are as follows:

(1) Spouse A v Spouse B - The spouses are representing clients whose interests are adverse.

(2) Spouse A v Firm of Spouse B - One spouse is directly representing a client whose adversary is represented not by the other spouse but by the firm of the other spouse.

(3) Firm of Spouse A v Firm of Spouse B - Neither of the spouses is directly involved but their respective firms are representing clients in an adversarial posture.

With respect to situation (1), that of the spouses directly representing adversaries, MRPC 1.8(i) states:

"A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship."

Thus, the spouses are not automatically disqualified from this representation but they must disclose the relationship to their clients and obtain their consent to the representation. This Rule is a change from the Code of Professional Responsibility which was interpreted in a number of opinions to preclude altogether such adverse representation by spouses.

Rule 1.8(i) is not applicable to the situations set forth in Examples (2) and (3), above. The comment to Rule 1.8 provides:

"The disqualification stated in paragraph (i) is personal and is not imputed to members of firms with whom the lawyers are associated."

Thus, Rule 1.8(i) does not mandate that the clients be informed of the

relationship and that their consent be sought where the firm of one spouse opposes either the other spouse or the firm of the other spouse. However, such disclosure may be required by the general rule on conflicts of interest, MRPC 1.7. This rule provides, in relevant part, as follows:

"(b) A lawyer shall not represent a client if the representation of that client may be materially limited by . . . the lawyer's own interest, unless:

"(1) the lawyer reasonably believes the representation will not be adversely affected; and

"(2) the client consents after consultation. . . ."

One can easily posit a situation where a lawyer's interest would be affected by litigation with a spouse's firm. For example, consider the situation where Spouse A is a partner or shareholder in a firm doing personal injury law, where a partner of Spouse A brings a contingent fee personal injury case, and where that case is defended by Spouse B. Because Spouse A is a partner or shareholder, Spouse A is entitled in salary or bonus to a percentage of the firm's income, and thus to a percentage of the recovery in that action. Assuming, as is most often the case in marital relationships, that A and B share income, or even indirectly benefit from each other's income, Spouse B will have a financial stake, a personal interest, in the outcome of that case. The conflict may prevent Spouse B from "reasonably believing the representation will not be adversely affected" under MRPC 1.7(b)(1), but if not, that interest must be disclosed by Spouse B to the client, and the client must consent to the representation.

If, in the above case, Spouse A is not a partner the situation becomes less clear. What if Spouse A is an associate whose prospects for advancement are dependent, at least in part, on the person in the firm who is litigating against Spouse B? Many similar questions could be asked and the answers are not clear, but lawyers involved in such situations must carefully examine all of the facts in order to determine whether they do have a personal interest in the outcome of the litigation. The sizes of the firms involved, their supervisory structures and the positions of the lawyer spouses in those structures, the compensation arrangements, the nature of the case involved, whether the case is a contingency fee case, and whether the firms have continuing relationships with the clients, are all factors which, along with others, must be considered by the lawyer spouses and their firms in deciding whether any lawyer's personal interests are implicated.

Where neither Spouse A nor Spouse B are personally involved in the representation, but their respective firms are representing adverse parties, the likelihood of either of the spouses or their firms having a personal interest in the outcome of the case appears to be less. However, all of the relevant facts should be examined carefully to determine whether either of the spouses or the lawyers in their firms who are involved in handling the

litigation have a personal interest in the outcome of the litigation which could interfere with the lawyer's representation of the client.

Again, the lawyer first determines whether a disinterested lawyer would reasonably believe the representation would not be adversely affected, and, if so, seeks client consent after disclosure.

Similar questions can arise where one or both spouses are employed by a governmental entity rather than by a private firm, although analysis should be the same. CI-1130, decided under the Code, dealt in part with the question of whether Spouse B could represent criminal defendants who were being prosecuted by lawyers who were supervised by Spouse A in the prosecutor's office. The opinion concluded that, because of the supervisory structure in the office, Spouse A was effectively acting in an adverse capacity to Spouse B, a situation which was held to be prohibited by the Code. Such a situation would not, as noted, be absolutely prohibited by the MRPC, however disclosure to the clients and consent would be necessary. The continued significance of CI-1130 under the MRPC is its recognition of the importance of the supervisory structure in the prosecutor's office, which may or may not be distinguished from that of a private firm.

To the extent that CI-1130 is inconsistent with this opinion, it is superseded. Opinions CI-65, CI-340, and CI-803 are all superseded.

Questions have been raised in the past and will undoubtedly arise again about the possibility of conflicts of interest where lawyers who are dating or cohabiting are representing adverse parties, or where their firms are involved in adverse representation. The Committee believes that in a cohabitant relationship, the lawyers are likely to have that degree of intimacy, confidentiality, and shared interest which creates the potential for conflict of interest in connection with a marital

relationship. Therefore, the lawyers in a cohabitant relationship should disclose that relationship if they are representing adverse parties and should seek client consent to continued representation, just as married lawyers must do in compliance with MRPC 1.8(i). If all of the facts discussed above suggest that a marital relationship should be disclosed to clients where the spouses' firms are involved in adverse representation, so also should a cohabitant relationship be disclosed. If the factors suggest the possibility that the lawyer's personal interests could be affected by the representation, MRPC 1.7(b) again is applicable. CI-607, which held that cohabitants were precluded from representing adverse parties, is superseded.

The degree of confidentiality and shared interest in a dating relationship can vary greatly. Lawyers involved in a dating relationship who are representing adverse parties should examine the situation carefully and should disclose the relationship to the clients if their relationship is sufficiently close that it could raise questions in the minds of the clients as to whether their interests would be zealously served. Lawyers should err on the side of caution and should disclose such relationships, or decline representation under MRPC 1.7(b), if they think there is any possibility that the clients would consider the existence of the lawyers' dating relationship to be detrimental to the lawyer-client relationship.

In sum, the existence of a marital relationship between lawyers

representing adverse interests in a lawsuit does not automatically disqualify them from that representation, but the relationship must be disclosed to the clients and they must consent to the representation. This requirement for disclosure and consent is not mandatory where a lawyer is representing a client and the law firm of the lawyer's spouse is representing the adverse client, nor is it mandatory where the respective law firms of lawyer spouses are representing adverse clients. However, where the existence of the marital relationship and all of the facts regarding the nature of the firms, the clients, and the case, create in the lawyer spouses or in the lawyers litigating the case a personal interest in the outcome of the litigation, the relationship and the nature of that personal interest must be disclosed to the clients pursuant to MRPC 1.8(i) and representation may be improper under MRPC 1.7(b). These same rules would be applicable to lawyers who are not married but are cohabiting. Where lawyers are dating and representing adverse clients at the same time, they should disclose the dating relationship if it is sufficiently close that its existence could cause the clients to consider it detrimental to the lawyer-client relationship.

The Committee has also been asked whether the activities allowed for a judge and the judge's spouse/advocate are parallel to those allowed for other lawyer spouses. MCR 2.003, regarding disqualification of a judge, provides, in relevant part, that:

"(B) Grounds. A judge is disqualified when the judge cannot impartially hear a case, including a proceeding in which the judge

". . .

"(2) is personally biased or prejudiced for or against a party or attorney

". . .

"(5) is within the third degree (civil law) of consanguinity or affinity to a person acting as an attorney or within the sixth degree (civil law) to a party; . . ."

Thus, a judge must disqualify himself or herself if the judge's spouse were representing a party in a case. In CI-605, this Committee addressed the question of whether a judge could preside in a case where a party was represented by a firm which employed the judge's spouse. In that opinion we stated:

". . . A judge is not automatically disqualified from hearing a case which is conducted by an unrelated attorney when the judge's spouse is the member of the same law office as the attorney acting in the proceeding. In such a case, the judge must disclose the relationship to all the parties to the proceeding and disqualify himself unless the parties formally request the judge to continue. . . ."

This is a more exacting standard than was suggested above for lawyer spouses, where disclosure would be mandatory only if all of the circumstances indicated that one of the spouses could have a personal interest in the outcome of the matter. Of course, the role of a judge differs from that of an advocate and this more exacting standard is clearly appropriate.

MCJC 2A and 2C provide:

"(A) Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly."

"(C) A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not use the prestige of his office to advance the business interests of himself or others. He should not appear as a witness in a court proceeding unless subpoenaed."

Because of the importance of avoiding even the appearance of impropriety, a judge should always disclose to parties in a case before him or her if he or she is dating a lawyer for either of the parties. If a party objects to the judge's continued service on the case, the judge should disqualify himself or herself.

In sum, the rules applicable to a judge are more stringent than those applicable to lawyers. A judge cannot hear a case where the lawyer for one of the parties is the judge's spouse and should similarly disqualify if the advocate is cohabiting with or dating the judge. A judge must disclose to the parties if the spouse is a member of or employed by a firm representing a party in a case. A judge must disclose to parties if the judge is living with or dating a lawyer for either of the parties in the matter.