



ALAN WILSON  
ATTORNEY GENERAL

May 25, 2011

The Honorable Raymond E. Cleary, III  
Senator, District No. 34  
PO Box 142  
Columbia, SC 29202

Dear Senator Cleary:

We received your letter requesting an opinion of this Office concerning Standards of Judicial Conduct. You asked whether a magistrate judge can serve in the same county in which the judge's spouse is employed by the Solicitor.

#### **Law/Analysis**

As noted in your request, the Advisory Committee on Standards of Judicial Conduct addressed a similar question, the "propriety of the spouse of a full-time magistrate accepting a position with the sheriff's department in the same county." The Advisory Committee concluded that the two should not serve in the same county. Opinion No. 8 – 2007. The committee explained as follows:

A judge must uphold the integrity and independence of the judiciary. Canon 1, SCACR, Rule 501. Canon 2 further states that a judge must avoid all impropriety and appearance of impropriety. The Code of Judicial Conduct does not prohibit the spouse of a judge from employment although "[a] judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment." Canon 2B.

In Opinion No. [12-2005], this Committee addressed the situation in which applicant for the position of part-time bond magistrate was married to a captain of the detective unit in the same county where the magistrate sought employment. The spouses employees would appear regularly before the magistrate to request issuance of warrants. This Committee determined that the spouse's employment was not separate and distinct, as the spouse or spouse's employees would regularly appear before the magistrate seeking the issuance of warrants. This Committee determined that the relationship between the magistrate and the

potential for the spouse to appear created the appearance of impropriety or would cause the public to question the impartiality of the judiciary.

The same reasoning is applicable here. The spouse's employment by the sheriff and the fact that the spouse will be required to testify as to the authenticity of the 911 tapes before the court may create the appearance of impropriety or partiality. Thus, the magistrate may not serve in the same county where the magistrate's spouse is employed.

Advisory Committee on Standards of Judicial Conduct, Opinion No. 8 – 2007.

Recently, the Advisory Committee on Standards of Judicial Conduct issued another opinion addressing almost the exact question before us, the “[p]ropriety of a full-time magistrate trying criminal cases, setting bonds, and holding preliminary hearings in the same county where judge’s spouse is primary investigator for the solicitor’s office.” Opinion No. 4 – 2011. The committee concluded that “[a] full time judge may not try criminal cases where the judge’s spouse is the primary investigator for the Solicitor’s office in the same county.” The committee further explained:

In this situation, the judge’s spouse and/or the spouse’s employer—the Solicitor—would appear before the judge in various criminal proceedings. Thus, as in the previous opinions, this would result in violations of Canons 1 and 2, by creating the appearance of impropriety and causing the public to question the impartiality of the judiciary. Therefore, the magistrate should not serve in criminal cases under these circumstances.

Advisory Committee on Standards of Judicial Conduct, Opinion No. 4 – 2011.

As mentioned above, the Judicial Canons emphasize the importance of not only avoiding impropriety but avoiding the appearance of impropriety. The commentary to Canon 1 explains that deference to the courts “depends upon public confidence in the integrity and independence of judges,” meaning judges must act “without fear or favor.” In other words, if the public is aware that the judge’s spouse is employed by the Solicitor’s office in the same county, confidence in the independence and integrity of the judge’s rulings may be questioned. Even though the judge may be able to remain objective, the public may perceive impropriety. While such precautions may seem extreme, the commentary to Canon 2a discusses that judges must accept restrictions on his or her conduct “that might be viewed as burdensome by the ordinary citizen.”

### **Conclusion**

Of course this issue is a matter for the Supreme Court and our Office defers to the Court’s interpretation of the Judicial Canons. However, in accordance with the Judicial Canons and

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consistent with prior opinions of the Advisory Committee on Standards of Judicial Conduct, it is the opinion of this Office that a magistrate judge cannot serve in the same county in which his or her spouse is employed by the Solicitor.

Sincerely,



Leigha Blackwell  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General