

STATE BAR ASSOCIATION OF NORTH DAKOTA

ETHICS COMMITTEE

OPINION NO. 94-06

MAY 31, 1994

The Ethics Committee has received a request from attorney [REDACTED] of [REDACTED], for an opinion on the following question:

May the attorney-spouse of a North Dakota District Court Judge appear in a judicial proceeding before other Judges of the District Court and in other courts in the Judicial District?

I. Opinions In Other Jurisdictions.

Pennsylvania, addressing the issue of a former law partner of a judge appearing before that judge, resolved that the lawyer was prohibited from such appearance before the former-partner Judge but other members of the lawyers present firm were not so prohibited.

By separate opinion Pennsylvania noted that although a judge's spouse may not appear as a lawyer before the spouse-judge, other lawyers associated with the spouse-lawyer are not so prohibited.

The American Bar Association Committee on Ethics and Professional Responsibility suggests the lawyer has no defined duty as questioned herein, but rather the burden falls upon the Judge to make his/her independent decision based upon his/her good judgment as applied to the Code of Judicial Conduct (See "ABA/BNA Lawyers' Manual on Professional Conduct" Current Reports).

II. North Dakota Rule.

Rule 1.7 of the Rules of Professional Conduct governs the conduct of attorneys relative to conflict of interest.

The rule is void of provisions addressing the question presented by [REDACTED]. There appears to be no North Dakota case law addressing the question.

Rule 3.5 of the Rules of Professional Conduct prohibits lawyers from improperly influencing a court. The question presented shows neither a direct nor an implied prohibition under Rule 1.7 or 3.5.

The North Dakota Code of Judicial Conduct Canon 3 (E through F) governs Judges conduct as it relates to necessary disqualification and remittal of disqualification. Further discussion of the Courts role will not be addressed since such is beyond the scope of the question presented.

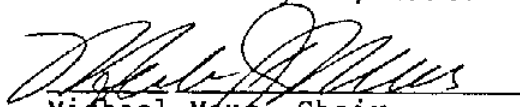
CONCLUSION

The committee is of the opinion that the attorney-spouse is not prohibited from practicing before other District Court Judges or other Courts within the District in North Dakota under the North Dakota Rules of Professional Conduct.

This opinion is provided pursuant to rule 1.2(b), North Dakota Rules for lawyer Disability and Discipline. This Rule states:

A lawyer who acts in good faith and with reasonable reliance on a written opinion or advisory letter of the Ethics Committee of the State Bar Association of North Dakota shall not be subject for sanction for violation of the North Dakota Rules of Professional Conduct as to the conduct which is the subject of the opinion or advisory letter.

This opinion was drafted by Wayne T. Anderson and was unanimously approved by the committee on May 31, 1994.


Michael Maus, Chair

94-06

Post-It™ brand fax transmittal memo 7671 # of pages 1	
To: <i>Sandra Tabe</i>	From: <i>Michael J. Maus</i>
Co: <i>SBAND</i>	Co: <i>H.G.M.</i>
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April 22, 1994

Michael J. Maus, Chairman
Ethics Committee
STATE BAR ASSOCIATION
Box 370
Dickinson, ND 58602-0370

Dear Mr. Maus:

I am requesting an opinion from the Ethics Committee on the following situation. I have reviewed the Rules of Professional Conduct regarding Rule 1.7, Conflict of Interest and believe that no conflict exists. Nonetheless, I am requesting the opinion of the Ethics Committee regarding any conflict of interest or appearance of impropriety in this situation.

My husband is a district court judge. I am an attorney and have my law office in my home. I do not appear before my husband in court. Further, any case in which I have been retained, my husband recuses himself. Both my husband and I are keenly aware of the need to maintain separation from each other's matters in order to prevent any conflict of interest and appearance of impropriety.

The question presented is whether or not there is a conflict of interest or an appearance of impropriety if I appear in front of any of the other judges in this district, including juvenile court, county court and the other district court judges?

I thank you in advance.

Sincerely yours,

