

FAQ Review: Nepotism

by Paul Campo

The following are responses to some frequently asked questions. The answers are not intended as legal advice and are not a substitute for consulting with your legal counsel.

What is nepotism?

Hiring or appointing family relatives.

Is nepotism allowed?

No. The Missouri Constitution contains an anti-nepotism provision. This provision states: “Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment.”

Who is a public officer?

No definitive lists exist, but Missouri courts have looked to statutory designations, the nature of the office and nature of authority. Examples of public officers would include mayor, alderman/council member, judge, treasurer, collector and city attorney.

What constitutes a naming or appointment?

Naming or appointing includes an actual hire, but it also includes the making of or voting in favor of an appointment. The anti-nepotism provision applies when a member of a governing body votes in favor of appointing a relative to a city or county board or commission, even if the appointment would have been approved without the relative’s vote. In a recent case, a Missouri court held that the anti-nepotism provision was violated where a mayor appointed her son-in-law to repair a city sign, despite her argument that he was an “independent contractor.” The court concluded “that the work of an independent contractor falls within the definition of “employment....”

What is consanguinity or affinity in the fourth degree?

Consanguinity is blood relationship. Affinity is the legal relationship that arises from marriage. Relations (blood or in-law) within four degrees includes a first cousin, great aunt/uncle, great nephew/niece, and great-great grandparents and relatives by a single marriage such as a sister-in-law.

Does nepotism apply if a person is elected to the board of a municipality and a relative is already an existing employee?

No, because the elected official would not have had a role in the hiring of the relative. There’s no requirement to fire a previously hired employee or remove from office a previously appointed official.

Does nepotism apply if a mayor appoints a relative, even if it is an unpaid position?

Yes. The Missouri Supreme Court has stated that the fact that appointee receives no compensation “is irrelevant.”

What is the penalty for nepotism?

The penalty is forfeiture of office. If a person who violates the anti-nepotism provision does not resign, he or she can be judicially removed from office.

Can family members be elected to the same governing boards?

Yes. For example, a mother and her son can both be elected to the Board of Aldermen and no nepotism occurs.

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Should a board member, with a relative employed by the same municipality, vote on wage increases or the budget that would include the relative's salary?

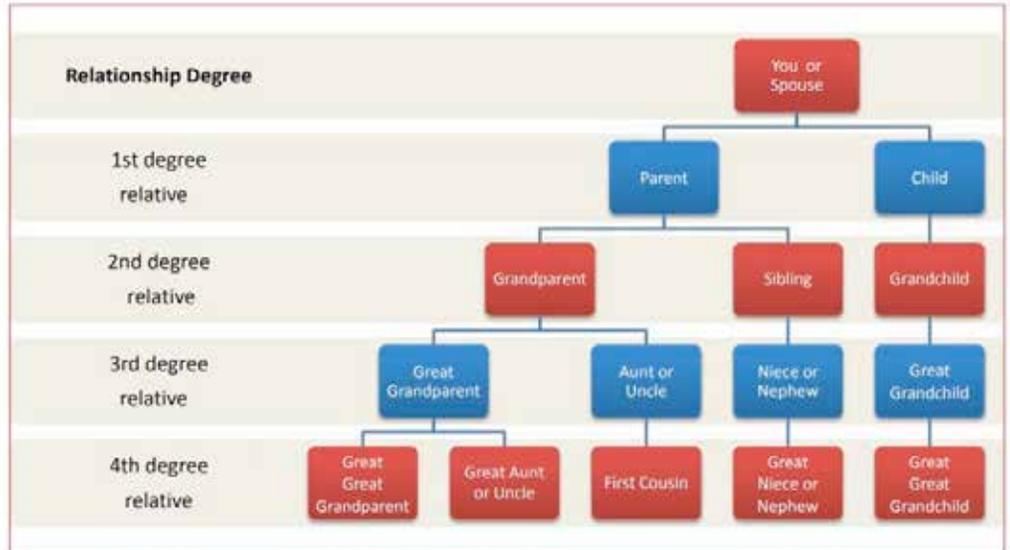
This question implicates Missouri's Conflict of Interest laws. Specifically, Section 105.452(4) prohibits the board member from voting on any matter that may provide a "special monetary benefit" to the member or her family. The Missouri Ethics Commission has concluded that there is no special monetary benefit when members of the class receive the same benefit. If the board member's spouse is treated differently from others in her class of employees, there may be a special monetary benefit and the board member should recuse from voting on the matter.

Can a family member serve on an elected board and another on an appointed board/commission?

Yes, but the elected official must be mindful of the appointing action. For example, assume that prior to her election to the Board of Aldermen, Susan's husband, Fred, was serving on the Planning and Zoning Commission. Fred may finish his term on the Planning and Zoning Commission. Fred could be reappointed to the Commission as long as Susan does not vote in consenting to his appointment.

How can we prevent nepotism?

The best way to prevent nepotism is through education. Those persons with hiring or appointing authority should be made aware of the anti-nepotism provision and its broad reach.



Consanguinity relationships are relatives by blood. Affinity relationships are relatives by marriage or adoption.

Depending on the nature of the entity, those persons who need to be educated could range from the mayor/governing body to the department director if he/she has hiring authority.

It is generally suggested that the nepotism prohibition extends to one's blood relatives and the blood relatives of one's spouse. Does this mean that an officeholder could promote the wife of the officeholder's husband's brother?

The Missouri Attorney General has opined that because affinity extends to a spouse and the spouse's blood relatives, the wife of the officeholder's husband's brother is not related by affinity to the officeholder, and therefore the anti-nepotism provision did not prohibit the promotion.

How does nepotism apply to step-children?

Step-children should be considered as being included within the relationship.

What about divorce? Are relatives of a divorced spouse still related?

After a divorce, affinity no longer exists because the legal relationship that arose from the marriage has ended.

What about live-in partners?

Missouri courts have defined affinity as a legal relationship which arises as the result of marriage. A live-in partner would not meet the court's definition.

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