

No. 2015-1. Can a lawyer whose practice is limited to family law in a law firm structured as an LLC in which fees are not shared remain in the firm with a part-time county court judge whose private practice is limited to immigration law?

Facts

You are practicing law in a two-member LLC, and the other member (the judge) has been recently appointed to a part-time county court judge position and will remain in the firm. You indicate there is no sharing of fees and your practice is separate and distinct fields. As a preliminary matter, the Committee concludes that your relationship with the judge is a “firm” or “law firm” as defined by the Colorado Rules of Professional Conduct (Colo. RPC or the Rules). Colo. RPC 1.0(c), (g).

Issues

With respect to that relationship, you pose two questions:

1. Is it improper for a partner or member in a law firm with a judge to practice only divorce and family law in the district court in the D-classification county in which the judge is a part-time county and municipal court judge?
2. In a two-party non-fee-sharing LLC, where a part-time county and municipal court judge has retired from the firm and from practicing law in the district in which he or she is a judge, but is still practicing federal immigration law, may the judge’s name be retained in the firm’s name and letterhead but specified as retired, or, in the alternative, state “practice limited to immigration law”?

Analysis and Conclusions

Question 1

Rule 5.5(a)(2) provides that a lawyer shall not practice law in a jurisdiction in which doing so violates the regulations of the legal profession in that jurisdiction. CRS § 12-5-118 provides: “A judge shall not have a partner acting as attorney or counsel in any court in his judicial district, county, or precinct.” The meaning and effect of this statutory provision is a question of law, which the Committee historically declines to address, and declines to address here.

To the extent CRS § 12-5-118 means that a judge may not have a partner acting as a lawyer in *any* court anywhere within the judge's county, it prohibits you from acting as a lawyer in that county as long as you remain in a firm with the judge. To the extent CRS § 12-5-118 means that a lawyer may not practice in either a district court *or* a county court when the lawyer's partner is a judge within the same district court *or* county court in which his or her partner is serving as a county court judge, it does not prohibit you from appearing as counsel in district court for that county. Further, you have advised the committee that the Colorado Supreme Court Judicial Ethics Advisory Board (in an unpublished opinion) had reached the same conclusion as to the judge under CRS § 12-5-118 as we reach here as to you under the Rules of Professional Conduct.

In Opinion 45, the Committee further concluded that a lawyer whose partner is a part-time judge may not accept or continue employment with respect to any matter that has derived from or was incident to a matter that has or is likely to come before the part-time judge. While Opinion 45 was based on the disciplinary rules, and in particular those rules pertaining to conflicts of interest and imputation of conflicts of interest, the Committee concludes that it remains ethically impermissible under the current Rules to represent a client in a matter previously pending before the lawyer's partner sitting as a judge. *See* Colo. RPC 1.7(a)(2), 1.10, 1.11(d).

Question 2

Your inquiry is premised on the judge's retirement from the law firm, but you indicate that the judge will continue to practice federal immigration law presumably with the firm. Rule 7.5(c) states: "The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm." Provided the judge is "actively and regularly practicing with the firm," the judge's name may be used in the name of the firm. If the judge is not "actively and regularly practicing with the firm," the judge's name may not be used within the firm name even if the judge is designated as retired because the judge will not be retired but rather serving as a judge. *See* Colo. RPC 7.1(a)(1), 7.5(c); Va. Legal Ethics Op. 1376.