

A Lawyer's Duty to Disclose a Familial Relationship with a Judge

Question: A lawyer appears in a matter before a judge who is related to the lawyer. Does the lawyer have a duty under the Illinois Rules of Professional Conduct to disclose the familial relationship to the lawyer's client and opposing counsel?

Short Answer: Although the Illinois Rules of Professional Conduct do not specifically address a lawyer's obligation to disclose a familial relationship with a presiding judge, the relationship may implicate the lawyer's duty not to knowingly assist a judge in violating applicable rules of judicial conduct, as well as the lawyer's obligations concerning personal interest conflicts and communication with their client.

Discussion

Although the question concerns the lawyer's obligations under the Illinois Rules of Professional Conduct, the analysis begins with the judge's disqualification obligations under Rule 2.11 of the Illinois Code of Judicial Conduct.

Rule 2.11(A)(2)(b) of the Illinois Code of Judicial Conduct mandates a judge's disqualification if a lawyer in the proceeding is within a "third degree of relationship" to the judge, their spouse, or domestic partner. "Third degree of relationship" as defined by the Code includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. Under Rule 2.11(C), the judge may disclose this relationship on the record and invite the parties and their counsel to waive the disqualification.

While a judge has these independent responsibilities under the Code of Judicial Conduct, the judge's responsibilities may also trigger the lawyer's duty under ILRPC Rule 8.4(f), which states it is professional misconduct for a lawyer to "knowingly assist a judge... in conduct that is a violation of the applicable rules of judicial conduct." If a judge fails to disqualify themselves or disclose the relationship, a lawyer who remains silent while knowing the judge's conduct is inconsistent with Rule 2.11 may be deemed to be knowingly assisting in judicial misconduct. Therefore, disclosure of the familial relationship or a motion to recuse the judge may be required to comply with the lawyer's obligations under Rule 8.4(f).

Separate from the lawyer's obligations under Rule 8.4(f), the familial relationship may also create a personal interest conflict under Rule 1.7 (Conflict of Interest: Current Clients), which, in section 1.7(a)(2), provides:

Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

...

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Under Rule 1.7(a)(2), a lawyer's familial relationship with a presiding judge does not necessarily create a concurrent conflict of interest. The lawyer must determine whether the relationship creates a significant risk that the lawyer's personal interest will materially limit the representation of the client.

In determining whether the familial relationship creates a significant risk of materially limiting the representation, the lawyer should consider Comments [1] and [8] and [11] to Rule 1.7.

Comment [1] states that the duties of loyalty and independent judgment are essential in the client-lawyer relationship. Comment [8] further explains that the critical questions in determining whether a conflict will materially limit the representation are the likelihood that a potential limitation will arise and whether it would materially interfere with the lawyer's independent professional judgment. The lawyer should consider whether the family connection with the presiding judge could impact their ability to effectively represent the client.

Comment [11] also recognizes that certain familial relationships may create a personal interest conflict. It explains that depending on the nature of the familial relationship there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment, and provides that each client is entitled to know of the existence and implication of the relationship. Although Comment [11] does not address a lawyer appearing before a judge with a familial connection, the risks it identifies may inform whether the relationship creates a personal interest conflict under Rule 1.7(a)(2) and whether the relationship should be disclosed to the client.

Guided by Comments [1], [8], and [11], the lawyer should consider whether the familial relationship could affect the lawyer's ability to carry out an appropriate course of action for the client. For example, the lawyer should ask themselves whether the relationship could prevent them from challenging the judge's rulings, decide whether to seek the judge's disqualification, or otherwise be an effective advocate on behalf of the client.

If the lawyer determines that there is not a Rule 1.7(a)(2) conflict, that still leaves open the question of whether the lawyer should communicate the nature of the relationship to their client and opposing counsel.

While Rule 1.4 (Communication) does not include an express requirement that the lawyer communicate familial connection between themselves and the judge, it does require that the lawyer inform the client of matters relevant to the case.

Pursuant to Rule 1.4(a)(2), "a lawyer is required to consult with the client about the means by which the client's objectives are to be accomplished."

Pursuant to Rule 1.4(b), "a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

The lawyer, therefore, should consider whether the familial relationship with the judge could influence how the lawyer handles the case.

Moreover, while the lawyer may have concluded that no Rule 1.7(a)(2) conflict exists, failing to provide this information to the client may deny the client access to information reasonably necessary to permit them to make an informed decision as to whether the lawyer is the right advocate for their matter. Accordingly, Rule 1.4 may require disclosure to the client if the relationship is relevant to the representation or the client's decisions.

The remaining question is whether the familial connection must be disclosed to opposing counsel. No Illinois Rule of Professional Conduct expressly requires a lawyer to notify opposing counsel of the family connection between themselves and the judge. However, in some instances, such as when the lawyer knows the familial connection is one that would require the judge to disqualify himself or herself, circumstances may require the lawyer to disclose the connection to opposing counsel.

Conclusion

The Illinois Rules of Professional Conduct do not impose a categorical duty to disclose every familial relationship between a lawyer and a judge. The lawyer must evaluate whether the relationship may implicate the lawyer's duty to refrain from knowingly assisting a judge in violating applicable rules of judicial conduct, creates a personal interest conflict under Rule 1.7, or requires disclosure to the client under Rule 1.4.

Resources

[RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS](#)

[RULE 1.4: COMMUNICATION](#)

[RULE 8.4: MISCONDUCT](#)

[Canon 2 Rule 2.11.pdf](#)

[Conflicts of Interest: The Lawyer's Own Interests | ARDC Online Learning Portal](#)