

ISSUE

May circuit court judges utilize legal research services of an attorney employed by the county who regularly practices before them?

ANSWER

No.

FACTS

The county at issue does not have the resources to maintain a full-time law clerk to assist the judges in conducting legal research. As such, the judges have selected and the county has hired and entered into a contract with a local attorney to occasionally conduct legal research for the judges on a per-hour basis. That attorney also takes public defender and indigent criminal defendant appointments in the county and has cases before the judges to whom he provides research services.

DISCUSSION

The Committee concludes that the issue presented is governed by the provision of SCR 60.03(2), which provides as follows:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

(1) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(2) A judge may not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others or convey or permit others to convey the impression that they are in a special position to influence the judge. A judge may not testify voluntarily as a character witness.

...

SCR 60.03(1) sets the standard for dealing with the public's perception of the integrity and impartiality of the judiciary. The test for the appearance of impropriety is the perception which the conduct would create in reasonable minds. These appearances are viewed from the perspective of the public, which expects a high standard of conduct on the part of judges.

The Committee empathizes with those counties that do not have the resources to hire full-time legal researchers. The Committee understands it may be difficult to find a qualified individual willing to fulfill research duties on a sporadic basis if the individual does not also practice in the county. However, convenience cannot be allowed to override the duty to demonstrate propriety at all times.

The Committee concludes that in specially selecting an attorney to act as a researcher and provide assistance in interpreting and applying the law, a judge is creating a relationship that, at a minimum, has the appearance of influencing judicial conduct or judgment. That the attorney might one day be in the judge's chambers providing assistance in interpreting the law, receiving the judge's candid opinions, and the next day appear before that judge in a case would create in reasonable minds the idea that the judge is less likely to be impartial and more likely to rule favorably for the attorney based on the special advisory relationship. In order to avoid any appearance of impropriety, the judge should employ only legal researchers who do not contemporaneously practice before the judge.

CONCLUSION

The Committee concludes that judges should not utilize the legal research services of an attorney who regularly practices before them.

APPLICABILITY

This opinion is advisory only. It is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee and is limited to the questions arising under the Supreme Court Rules, Chapter 60, *Code of Judicial Conduct*. This opinion is not binding on the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial disciplinary responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 13-1 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 26th day of February, 2013.

The Honorable Wayne J. Marik
Chair