



*Professional Ethics Committee*

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Informal Opinion 2012-07

**Law firm members' practice before a judicial officer who is a family member of an associate of the firm.**

You are a small law firm practicing in the area of workers' compensation law. You plan to hire an associate who is the offspring of a sitting workers' compensation commissioner. You request we answer two questions. First, what prohibitions exist regarding this associate appearing before any workers' compensation commissioners? Second, are other attorneys at the firm conflicted from appearing before any commissioners?

The Rules of Professional Responsibility do not contain any specific guidance regarding an attorney's appearance before a judicial officer where there is a familial relationship with the attorney. The way in which judges handle such a situation is guided by the Code of Judicial Conduct [See generally, Rule 2.11 of the Code of Judicial Conduct].

The question of whether the Code applies to worker's compensation commissioners was addressed to the Director of Legal Services for the Connecticut Judicial Branch who replied to this committee's inquiry as follows:

The Code of Judicial Conduct, by its own terms does not state that it applies to Workers' Compensation Commissioners, but rather states that it applies to all judges of the superior court, senior judges, judge trial referees, state referees, family support magistrates appointed pursuant to General Statutes section 46b-231(f), and family support magistrate referees.

Notwithstanding the foregoing, pursuant to C.G.S. sec 51-51h compensation commissioners are included in the term 'judge' for purposes of Chapter 872a, which chapter includes the authority of the Judicial Review Council. As a result, pursuant to C.G.S. section 51-51i (a) (2) Compensation Commissioners are subject to censure suspension, or removal from office 'for willful violation of C.G.S. section 51-39a or any canon of judicial ethics.'

The Chairman of the Workers' Compensation Commission has indicated to this committee that the Commissioners are subject to a separate "Code of Ethics for Workers' Compensation Commissioners" as issued by the State Ethics Commission effective July 8, 1999. The Commission Chairman also indicated that Commissioners nonetheless also follow the Code of Judicial Conduct "voluntarily" rather than as the result of a legislative or judicial mandate.

Questions regarding the disqualification of a Workers' Compensation Commissioner are resolved by a Commissioner or the Chairman, in light of foregoing Codes. This committee does not address such questions.

Rule 8.4 (6) of the Rules of Professional Conduct states that it “is professional misconduct for a lawyer to... knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.” Thus, while we are not the forum to interpret either the Code of Judicial Conduct or the Code of Ethics for Workers’ Compensation Commissioners, because Rule 8.4 requires that lawyers refrain from conduct which “knowingly assist(s)” a judge or judicial officer in conduct violative of applicable rules of judicial conduct or other law, we must nonetheless interpret one of these Codes for the limited purpose of providing guidance to practitioners under this Rule.

As such, regarding your first question, it is our opinion that it would be a violation of Rule 8.4 (6) for your firm’s associate to appear before the “parent” Commissioner. This opinion is based on a plain-language interpretation of Section 18 of the Code of Ethics, which states “A Workers’ Compensation Commissioner should disqualify himself or herself from presiding over a matter in which the Commissioner’s impartiality might be reasonably questioned, including situations in which...D. The Commissioner or the Commissioner’s close relative is a party to the proceedings or ...is acting as a lawyer in the proceeding.” Section 18 (E) defines “close relative” as the Commissioner’s “spouse, domestic partner, grandparent, parent, child, grandchild, sibling, parent’s sibling, or sibling’s child.”<sup>1</sup>

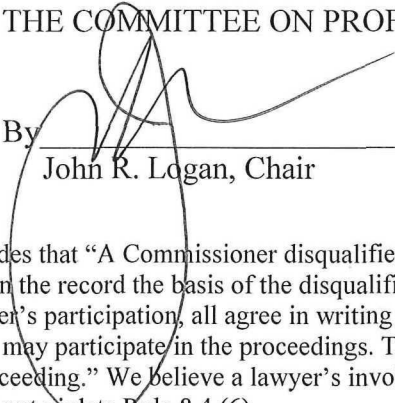
We do not see any basis in the Rules for restricting the associate from appearing before other “non-parent” Commissioners in context of our plain language review of the Code of Ethics.

Your second question is whether any restrictions exist limiting other members of your firm from appearing before the “parent” Commissioner. The appearance by a firm member before the “parent” commissioner could be considered “a matter in which the Commissioner’s impartiality might be reasonably questioned,” with reference to Section 18 of the Code of Ethics. Section 18 (C), for example, describes situations where “the Commissioner’s close relative has a financial or other interest in the subject matter which could be substantially affected by the decision” as candidates for disqualification based on impartiality questions. This subsection raises disqualification issues even though the associate may not be personally appearing before the “parent” Commissioner.

Therefore, to ensure against any violation of Rule 8.4, prior to conducting any business before the “parent” Commissioner, any attorney in your firm should first bring to the attention of the “parent” Commissioner and any opposing counsel (or pro se party or party’s representative) the attorney’s association with the associate, and any “financial or other interest” that the associate may have in the matter being heard, to ensure that the “parent” Commissioner can make an informed decision regarding disqualification under the Code of Ethics for Workers’ Compensation Commissioners.

We do not believe that the members of your firm, including the associate, are restricted under the Rules from appearing before other Commissioners.

THE COMMITTEE ON PROFESSIONAL ETHICS

By   
John R. Logan, Chair

<sup>1</sup> Section 19 of the Code of Ethics also provides that “A Commissioner disqualified by the terms of section 18 may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and the lawyers, independent of the Commissioner’s participation, all agree in writing or on the record that the Commissioner’s relationship is immaterial the Commissioner may participate in the proceedings. The agreement signed by all parties and the lawyer shall be incorporated in the record of the proceeding.” We believe a lawyer’s involvement in such a proceeding where the Commissioner follows this procedure would not violate Rule 8.4 (6).