

JUDICIAL ETHICS COMMITTEE

ADVISORY OPINION NO. 00-02

The committee has been asked to render an ethics opinion as to whether Knox County General Sessions Judges, as a matter of public policy, should recuse themselves from cases in which a specific Knox County Deputy Sheriff is involved. The factual basis for the request for this ethics opinion is that a Knox County Deputy, during the course of a preliminary hearing, admitted, while under oath and in open court, that he had lied under oath in order to procure the issuance of an arrest warrant. The fabrications were factual in nature and formed the basis for the issuance of the arrest warrant and related to a fabricated, fictional defendant.

Since this incident, several Knox County General Sessions Court Judges have issued an order to the judicial commissioners that this deputy not be allowed to procure warrants on his own application without prior approval from the District Attorney General indicating there was a valid basis for prosecution. There are cases now pending before the General Sessions Judges in which the deputy is a witness for the State of Tennessee. The question has been raised based upon Canon 3(B)(5) as to whether the General Sessions Judges who signed the order must recuse themselves from presiding over matters involving this deputy sheriff because of a preconceived opinion as to the deputy's credibility.

Canon 3(B)(5) provides as follows:

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so.

The commentary to Canon 3(B)(5) states that "A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute."

The committee finds that this question is also controlled by Canon 3(E)(1)(a).

This section states that:

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.

This issue is not simply one of actual partiality, as recusal is also warranted when a person of ordinary prudence in the judge's position would find a reasonable basis for questioning the judge's impartiality. See Alley, v. State, 882 S.W.2d 810, 820 (Tenn.Crim.App.1994).

Not every bias, partiality, or prejudice, however, merits recusal. To disqualify, the prejudice must be of a personal character, directed at the litigant, must stem from

an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from participation in the case. Alley at 821.

Although a trial judge should recuse himself or herself whenever the judge has any doubt as to his or her ability to preside impartially in a criminal case or whenever his or her impartiality can reasonably be questioned, as a general principle, the individual judge and not this committee, retains discretion over recusal when questioned on the basis of bias or prejudice. State v. Smith, 906 S.W.2d 6, 11 (Tenn.Crim.App. 1995). For this reason, this committee is unable to render a general advisory opinion on this matter or rule upon the propriety of the judges hearing cases involving this deputy collectively, rather than individually. Each general sessions judge must make an appropriate determination as to his or her impartiality in each individual case where the deputy is a potential witness. If at that point an individual judge doubts his ability to preside impartially due to his previous experiences with the deputy/witness, that judge should recuse himself or herself.

FOR THE COMMITTEE:

Cheryl Blackburn
Judge

CONCUR:
HAYES
FRIERSON
PEETE

NOT PARTICIPATING:
WAGGONER