



## *Judicial Discipline & Disability Commission*

JUDGE LEE HARROD  
CHAIRMAN

323 Center Street • Suite 1060  
Little Rock, AR 72201  
(501) 682-1050 • Fax: (501) 682-1049  
E-Mail: [jddc@arkansas.gov](mailto:jddc@arkansas.gov)

EMILY ABBOTT  
EXECUTIVE DIRECTOR

### P R E S S   R E L E A S E

POINT OF CONTACT: EMILY ABBOTT

PHONE: 682-1050

FOR IMMEDIATE RELEASE

NOVEMBER 19, 2024

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to Judge-Elect Jill Stewart Kamps. The primary writer for the opinion is JEAC Member, (former Chief Justice) Prof. Howard W. Brill.

The opinion is attached.



## *Judicial Ethics Advisory Committee*

November 14, 2024

Judge-Elect Jill Stewart Kamps

RE: JEAC Advisory Opinion 2024-01

Dear Judge Kamps:

Your letter of November 4 asks us to address a potential conflict of interest that may arise when you assume the bench as a Little Rock District Court Judge in January 2025. You will be presiding over Division One, which operates exclusively as a criminal court. You inform us that the LRDC's involvement in the criminal process is limited to the earliest stages of the criminal process –issuing warrants, making probable cause determinations, conducting felony first appearances where counsel is appointed and bond set, and conducting preliminary hearings when requested.

The potential conflict arises because your husband David, who has a largely domestic relations practice, has been a part-time deputy prosecuting attorney since March 2023. He exclusively handles civil asset forfeiture matters in the 6<sup>th</sup> Judicial District. He performs his prosecutorial duties from his law firm office, using prosecutor support staff and resources as needed.

Your letter summarizes the differences between civil asset forfeiture cases and your criminal docket. You state: "While a forfeiture case might technically exist while preliminary criminal matters are pending in district court, there is no overlap. District court judges aren't notified of forfeiture cases, and their preliminary criminal rulings can't affect the forfeiture outcome. The district court's role ends early, and the felony case determining the forfeiture continues entirely in circuit court.

**Discussion:** Since the creation of this committee on July 1, 1991, the procedural rules have stated in part:

4. Advisory opinions shall set forth the facts upon which the opinion is based. Advisory opinions shall address only whether an intended, future course of conduct violates the Arkansas Code of Judicial Conduct and shall provide an interpretation of this Code with regard to the factual situation presented. The opinion shall not address issues of law nor shall it address the ethical propriety of past or present conduct. . . .

1)The Code of Judicial Conduct requires a judge to recuse when any of four specific grounds are present. None of these grounds appear to apply to this situation. But more broadly, the Code requires a judge to recuse when “the judge’s impartiality might reasonably be questioned.” Rule 2.11(a).

From the beginning, and consistent with the Code, this committee has been reluctant to be involved in motions or potential motions for recusal. See Opinions 92-01, 96-06. These issues usually involve issues of law, which are best fully developed and determined in an adversarial setting.

However, as you pointed out in your detailed and helpful letter, courts in Kansas and Minnesota have issued opinions on related conflicts. In addition, this committee has occasionally issued opinions relating to potential conflicts involving relatives and the need for disqualification. Opinion 94-07, 95-06, 98-04.

But none of those Arkansas opinions involved a conflict arising from a spouse’s practice of law.

Perhaps more significantly, the Arkansas opinions were issued under the prior Code. The Supreme Court adopted a new Code, effective July 1, 2009. Accordingly, those earlier opinions would need to be reviewed, and possibly reconsidered under the current Code.

Further, it seems to us impossible to envision all the factual variations that might arise when you are on the bench hearing criminal matters and your husband is a deputy prosecuting attorney.

Finally, the Code mandates that “a judge shall avoid impropriety and the appearance of impropriety.” Canon 1, Rule 1.2. Comment [5] states “the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge . . . engaged in other conduct that reflects adversely on the judge’s . . . impartiality.”

The committee can foresee a situation in which, at the outset of a case, during the case or after a decision, a defense attorney might file a motion for recusal based on your husband’s position as a deputy prosecuting attorney in the same judicial district. That motion would be addressed to you, with an appeal going to an appellate court. There are innumerable scenarios for such a motion and the disruption this could cause everyone involved.

Given all the variables that might be present, and for all of the above considerations, this committee is not in a position to issue a definitive opinion on whether you do or do not have a conflict, and when you would be required to recuse.

2)Your letter points out the multiple layers of separation (physical, subject matter, temporal, jurisdictional) between district court proceedings and civil asset forfeiture proceedings in circuit court. You also state that if this committee identifies a conflict, you propose implementing specific

screening procedures that are consistent with the intent of the Code of Judicial Conduct. In particular, you mention:

- a) strict separation between your work in the district court and any civil asset forfeiture cases in circuit court;
- b) your husband maintaining an office physically separate from the prosecutor's office;
- c) when necessary, you would make an appropriate disclosure and recuse from bond setting and preliminary criminal matters.

In the committee's opinion, those screening mechanisms, while helpful in mitigating the potential for a conflict and persuasive, are not specifically contemplated by the Code of Judicial Conduct. The Code anticipates either a judge staying on a case or recusing altogether. These three steps are indeed desirable, and they may help dissuade any motion for recusal or persuade an appropriate authority that no true conflict exists and you need not recuse. The committee suggests that upon taking the bench you implement these steps as a standing order of your court. Further, our opinion is that, pursuant to Rule 2.11 (C), you consider making a disclosure on the record.

**Conclusion:** This committee does not have the authority to issue a ruling that protects you or isolates you from any motion that seeks your recusal by alleging a conflict of interest or the appearance of impropriety.

Sincerely,

Howard W. Brill

For the Committee

Henry and Guthrie concur