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QUESTIONS PRESENTED

What restrictions or limitations are there on the services of a judge's law clerk who was previously employed by the prosecutor's office? May a law clerk serve in the limited capacity of a bailiff in the event that law clerk is prohibited from being involved in a case because of an apparent conflict?

DISCUSSION

Canons 2 and 3 of the Revised Code of Judicial Conduct require that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities and shall perform the duties of judicial office impartially and diligently. Canon 2, Section A, provides:

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.

Canon 3, section C(2) provides:

A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

Generally, a law clerk should not participate in the court's handling of any case in which the law clerk was exposed to in any way while employed by the prosecutor. Furthermore, these facts should be placed on the record, and the law clerk should be isolated from the case. The judge should disclose to the parties on the record that the law clerk was previously involved with the case while with the prosecutor and that the law clerk will be isolated from the matter before the court.

The law clerk could serve as a bailiff if the nature of the clerk's conflict is disclosed to all parties in the case and opportunity is afforded the parties to express any objections for consideration by the Court.

Furthermore, the law clerk could work on other cases involving the prosecutor's office unless specific facts would reasonably render suspect the clerk's impartiality, such as, information obtained by reason of the law clerk's employment with the prosecutor, relationship to the parties, etc.

FOR THE COMMISSION
ON JUDICIAL CONDUCT



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