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FORMAL ADVISORY OPINION #04-96
FEBRUARY 26, 1997

QUESTION PRESENTED

May Judge A appoint Judge B's spouse to serve as a commissioner in a foreclosure action? The Commission assumes for purposes of this opinion that the proposed commissioner is qualified by education, training and experience to perform the responsibilities of a commissioner and the only question relates to the proposed commissioner's marital status.

DISCUSSION

Canon 3C(4) of the Hawaii Code of Judicial Conduct provides:

A judge shall not make unnecessary appointments.
A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

The code does not define "nepotism," but dictionary definitions suggest that the prohibition on nepotism would only prohibit Judge B, not Judge A, from appointing Judge B's spouse.¹ The Commission believes that public policy of this state generally supports treatment of individuals on their own merits, without regard to marital status, and that a qualified individual's marriage to a judge

¹ For example, the 4th edition of *Black's Law Dictionary* defines nepotism as "[b]estowal of patronage by public officers in appointing others to positions by reason of blood or marital relationship to appointing authority." The second college edition of *Webster's New World Dictionary* defines nepotism as "favoritism shown to relatives esp. in appointment to desirable positions."

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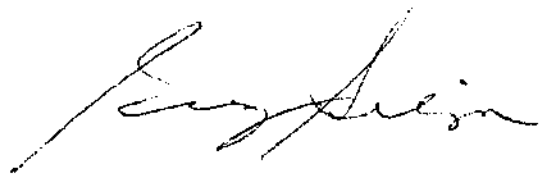
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should not by itself be an impediment to court appointments. Therefore, Judge A may appoint Judge B's spouse to serve as a commissioner in a foreclosure action.

The Commission has reviewed the Report of the Advisory Committee on Commissioners in Judicial Foreclosure Actions dated October 6, 1988 and found in general that the Advisory Committee's recommendations regarding the selection of commissioners is followed in practice to insure that the public's perception of the integrity and impartiality of the selection process is not impaired. The Commission notes that there should be a qualification process that encourages selection based on merit and utilizes some aspects of random and rotational selection from qualified applicants. The Commission finally notes however that within the confines of merit and impartiality, the Court's sound discretion is still the ultimate arbiter in the selection process since an appointed commissioner serves as an officer and representative of the Court and remains responsible and accountable to the Court.

FOR THE COMMISSION ON
JUDICIAL CONDUCT



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