

Judicial Inquiry Commission

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June 27, 1997

The Judicial Inquiry Commission has considered your request for an opinion regarding the parameters of permissible social contact between you and a lawyer-friend convicted in federal court of laundering drug money.

It is the opinion of the Commission that while both private and public social interactions may be problematic, they are not per se prohibited. The judge should always be mindful of the appearance of impropriety that such private and public interactions may create and should temper his or her actions accordingly.

Canons 1 and 2 to which you refer in your request, require a judge, inter alia, to uphold the integrity of the judiciary and to avoid both impropriety and the appearance of impropriety in all his or her activities. The Commentary to Canon 2 explains:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must, therefore, accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

In the Commission's opinion, a judge's maintaining a private social relationship does not per se run afoul of Canon 2. One treatise explains:

Although numerous dicta indicate that judges may be disciplined for close and intimate association with criminals, there appears to be only one reported instance of punishment being imposed in the absence of more palpable misconduct.

Shaman, Lubet, Alfini, *Judicial Conduct and Ethics*, 2d ed., §10.14, at 317 (citations and interior quotations omitted). The authors of the treatise characterize the issue as "a relatively open one." Id.

One case illustrates the degree of care a judge should exercise. The New Jersey Supreme Court has held that a municipal court judge violated Canon 2 when he attended a Labor Day picnic at the home of a long-time friend who had recently been convicted on federal racketeering charges. In re Blackman, 591 A.2d 1339 (N.J. 1991), The Court noted that a judge's responsibilities for his conduct greatly exceed those of ordinary citizens. The picnic was, however, widely-publicized, and the press publicized the judge's attendance.

Even though not per se improper, a judge should not foster a friendship that has an appearance of impropriety or raises questions of the judge's allegiance to the judicial system. A judge's good faith or intentions are overridden by the appearance of impropriety.

A judge is not in violation of Canon 2 by attending the same church as the lawyer-friend. A judge cannot control the church the friend attends or the stores at which the friend shops, and should not be expected to change his church attendance and shopping in response to this issue. A judge can, however, control the degree of his or her interaction with the friend in such public venues. A judge should make certain that his or her actions do not create an appearance of impropriety.

Yours very truly,

JUDICIAL INQUIRY COMMISSION