

Informal Opinion 11-01
February 2, 2011

Question: The Board of District Court Judges has asked the following questions: May a judge perform a marriage ceremony for any of the following persons: (1) an attorney who has one or more matters pending before the judge; (2) a party who has one or more matters pending before the judge; or (3) the child or other close relative of an attorney or party who has one or more matters pending before the judge?

Answer: A judge may perform a marriage ceremony in each of those situations.

Discussion: The Board of District Court Judges has referenced two rules that apply to this question. Rule 1.2 states that “a judge should act at all times in a manner that promotes - and shall not undermine - public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.” Rule 3.1(c) states that “a judge shall not . . . participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality . . .” The Committee agrees that these rules apply. Rule 3.12 on compensation for marriages may also be relevant.

The Committee has been unable to find any ethics advisory opinions from other states that address these questions. The Committee found, however, several newspaper articles questioning the propriety of judges performing marriages for individuals who had cases before the judges. In one case, a judge performed a marriage for a defendant in a domestic violence case that was before the judge. The marriage was to the defendant’s accuser. Allegedly, one of the purposes of the marriage was so that the spousal privilege could be invoked. The judge was criticized by numerous media outlets throughout the country, an indication that the judge’s actions may have undermined public confidence in the judiciary.

In another case, a federal court judge was criticized for performing a marriage for a defendant who was awaiting sentencing before the judge. The prosecutors had objected to the judge performing the ceremony, claiming that the marriage would shift focus away from the sentencing. The judge was criticized by at least one legal ethicist, again suggesting a lack of public confidence, although the criticism was not on the scale of the other scenario.

In two previous opinions, the Committee addressed issues related to judges performing marriages. These opinions addressed the circumstances under which a judge may receive compensation for performing a marriage. However there is language in one of the opinions that is relevant to this opinion. In Informal Opinion 98-8, the Committee recognized that performing marriages is an important judicial function. The Committee stated that “while officiating marriages is not a core judicial function, judges, as part of a small group of public officials empowered to perform civil wedding ceremonies, have a responsibility to perform this important

public service.” The Committee determined that judges may not accept compensation for performing marriages during regular court hours because the judges are on “company time.” The fact that performing marriages is an official duty is an important consideration in answering these questions.

Although performing marriages is a judicial duty, the traditional rule on conflicts of interest does not apply. A judge may perform marriages for friends and family members even though the judge could not preside over cases involving those individuals. The question is then strictly related to whether public confidence in the integrity of the judiciary is undermined if a judge performs a marriage for someone who has a case pending before the judge. The Committee determines that public confidence is not automatically undermined in those situations.

As to the first question on whether a judge may perform a marriage ceremony for an attorney who has one or more matters pending before the judge, the Committee believes that Formal Opinion 98-1 provides some perspective on this issue. In Formal Opinion 98-1, the Judicial Council determined that judges may engage in social interactions with attorneys who have cases pending before the judge, except on actual trial days. If a judge may have lunch with an attorney who has a case before the judge, the Committee sees no reason why the judge should not be able to perform a marriage ceremony for the same attorney. Although Formal Opinion 98-1 was premised, in part, on the important interaction between the bar and the bench, the implication is that public confidence is not undermined by that type of interaction. Because a judge may perform a marriage for an attorney who has a case before the judge, a judge may also perform a marriage for a relative of the attorney.

The Committee also determines that a judge is not prohibited from performing a marriage for a party who has a case before the judge. Judges often have interactions with the same individuals in separate cases. Simply because a judge has interacted with a party in one case does not mean that the judge has a conflict in deciding another case involving that party. Public confidence is not undermined if, for example, a judge finds an individual guilty in one case, but then finds the same individual not guilty in another case. The public generally recognizes that a judge is able to impartially perform his or her duties in different settings.

Performing marriage ceremonies is an important judicial responsibility and a judge who fulfills the judge’s duty by performing a marriage ceremony for a party does not erode the public’s confidence in the judge’s ability to fulfill the judge’s other duties involving the same individual in a courtroom. A judge may interact with a party in a courtroom setting and then in a marriage ceremony. This conclusion also extends to the family members of parties. This conclusion is particularly important in smaller communities where the judge may be the only person a couple can ask to perform the ceremony.

Although a judge is not prohibited from performing marriages for attorneys, parties, and their family members, the Committee cautions judges that there may be circumstances in which performing a marriage ceremony may undermine public confidence. In the above story in which a judge performed a marriage ceremony for the defendant and the alleged victim in the domestic violence case, the Committee believes that the judge is justifiably criticized for the judge’s

actions. The ceremony was between an alleged abuser and an alleged victim in a domestic violence case, and one of the stated purposes of the marriage was to effectuate the marital privilege. The judge thus participated in an action that was calculated to increase the possibility of dismissal. The Committee is not stating that this ceremony violated the Code of Conduct, but simply recognizes that, at the very least, the better course of action would have been for the judge not to perform the ceremony.

At the same time, the Committee believes that the federal judge who performed a marriage ceremony for a defendant who was awaiting sentence did not undermine public confidence in the judiciary. There is nothing to suggest that the judge's judgment was compromised in any way by performing the ceremony. The Committee cautions judges to exercise appropriate discretion, for example, in a high profile case or a case in which the marriage is likely to affect the outcome of the case. The circumstances under which a judge should not perform a marriage would be rare.

In conclusion, the Code of Judicial Conduct does not prohibit judges from performing marriages for those who appear before the judge or for the family members of those who appear. By performing marriage, judges are exercising an important judicial function.