

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2004-EC-001 Issued January 16, 2004

The Ethics Commission has received a written request for an advisory opinion from the Honorable Robert W. Garrett, Circuit Judge, Twenty-Second Judicial District. In his advisory opinion request, Judge Garrett states his Case Coordinator is expected to take maternity leave in March and asks whether it would be permissible for him to hire his sister-in-law on a temporary basis to fill the position.

Arkansas Code Ann. § 21-8-304(a) prohibits, among other things, a public official from using his official position to secure special privileges for persons standing in the first degree of relationship. The term, "special privileges," is not defined in the Arkansas Code. However, Black's Law Dictionary, Seventh Edition, defines special privilege as:

A privilege granted to a person or class of persons to the exclusion of others and in derogation of the common right.

The Commission notes that Judge Garrett's sister-in-law does fall within the group of persons related to him within the first degree of relationship. Arkansas Code Ann. § 28-9-212; Southern Farm Bureau v Daggett No. 02-804 (Ark 09/25/2003); Farmers Bank of Greenwood v Perry, 301 Ark. 547, 787 S.W.2d 645 (1990); Morton v Benton Publishing Co. 291 Ark. 620, 727 S.W.2d 824 (1987); McDaniel v State, 228 Ark. 1122, 313 S.W.2d 77 (1958).

In Advisory Opinion No. 2001-EC-003 the Commission noted that Ark. Code Ann. § 21-8-304(a) does not constitute a blanket prohibition against a public official hiring a family member. Among the factors to be considered in deciding whether the public official's hiring of a relative constitutes a special privilege are whether required procedures such as advertising or posting the position were followed, the qualifications of the relative compared to others who applied for the position or previously held the same position, and the amount of salary offered to the relative in comparison to the amount paid to other employees not related to the public official. The facts of each situation will be evaluated on a case-by-case basis.

Although the Commission does not have jurisdiction over the Arkansas Code of Judicial Conduct, it is noted that Canon 3(c)(4) provides:

A judge shall not make unnecessary appointments. A judge should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. No judge shall employ a spouse or other relative unless it has been affirmatively demonstrated to the Arkansas Judicial Discipline and Disability Commission that it is impossible for the judge to hire any other qualified person to fill the position.

Assuming the Judge's sister-in-law has the expertise and experience required of a case coordinator and receives a salary commensurate with that paid to others in the same position, hiring her on a temporary basis while his case coordinator is on maternity leave would not constitute a *per se* violation of Ark. Code Ann. § 21-8-304(a). It would appear however, that such a hiring might conflict with Canon 3(c)(4) of the Arkansas Code of Judicial Conduct.

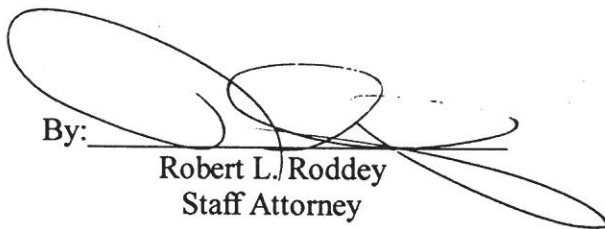
It is noted that Commissioners Dickey and Ball dissent from the opinion set forth herein on the basis that they believe that if the Legislature has chosen not to define "special privilege" as to employment, and has left that responsibility to the Commission, then employment equals special privilege.

This advisory opinion is issued by the Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

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By: _____

Robert L. Roddey
Staff Attorney

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