

Supreme Court Policy Governing Municipal Court Administrators and Deputy Administrators Who are Married To or are the Parents or Children of Police Officers

Directive #1-92
Issued by:

January 1, 1992
Robert D. Lipscher
Administrative Director

This memorandum is to advise you that the Supreme Court has withdrawn that portion of AOC Municipal Court Bulletin No. 5/6-77 (1977) entitled "Spouse, Parent or Child of Law Enforcement Officer Serving as Court Clerk for Deputy Court Clerk" and AOC Directive No. 10-1988 and substitutes, in their stead, the following directive:

Effective as of this date, a person who is the spouse, parent, or child of a municipal police officer or who lives with a municipal police officer may not be appointed as the court administrator or deputy court administrator (hereafter, "administrator" refers to the court administrator or deputy court administrator or both as the context of this directive requires) in the same municipality in which the officer serves. "Lives with" means a living arrangement substantially similar to that of a marital relationship.

An administrator who marries the municipal Chief of Police or whose spouse becomes the Chief of Police, regardless of when they were married, or who lives with the Chief of Police, shall be removed from his or her position as administrator.

Disqualification where administrator not subject to removal (e.g., an administrator who marries a police officer, an administrator whose spouse, child or parent becomes a police officer):

An administrator whose spouse, parent, or child becomes a police officer, or an administrator who, after appointment, marries or lives with a police officer, is disqualified from participating in matters in which the officer has been involved in any way. Participating includes, but is not limited to, the administrator's involvement in the preparation or completion of a complaint, the issuance of arrest or search warrants, the setting of bail, the scheduling or adjournment of a matter, or any aspect of the trial itself. The disqualification applies even if the officer serves other than in the municipality.

If the administrator's disqualification from a matter would leave the municipal court with no practicable means of substituting for the administrator's services, the municipal court judge, on notice to the parties, may make written application to the Vicinage Presiding Judge - Municipal Courts, or, if there is no Vicinage Presiding Judge, to the Assignment Judge, for permission for the administrator to participate in the matter. The application must set forth the disqualifying condition or conditions and explain why no practicable means of substitution exists. On good cause shown, the Vicinage Presiding Judge or Assignment Judge may enter an order permitting the administrator to participate in the matter except that the administrator shall not be permitted to issue warrants or set bail in the matter and the administrator's participation is further subject to such other terms and conditions as the judge deems necessary to preserve the neutrality and appearance of neutrality in the municipal court.

Addendum

The policies expressed in AOC Municipal Court Bulletin No. 5/6-77 (1977) and AOC Directive No. 10-1988 did not specify all the circumstances under which they were to be applied. This directive preserves the prohibition that a person who is the spouse, parent, or child of a municipal police officer may not be appointed as the court

administrator or deputy administrator in the same municipality in which the officer serves. It also makes it clear that such prohibition applies to the appointment of a person who is living with a police officer.

This directive and the withdrawal of the aforementioned portion of the AOC Municipal Court Bulletin No. 5/6-88 (1977) make clear that a person who is appointed as court administrator or deputy court administrator is not subject to removal if, subsequent to appointment, the administrator marries or lives with a municipal police officer or the administrator's spouse, parent, or child becomes a police officer.

An administrator, however, who marries or is married to, or lives with someone who is or becomes, the municipal Chief of Police is to be removed from his or her position as administrator, regardless of when the person became the Chief of Police or when the marriage or living arrangement commenced.

The circumstances when disqualification of the administrator, rather than removal, apply are spelled out, as well as the extent of the disqualification.

This directive reflects the Supreme Court's longstanding policy of separating the municipal courts from the police departments both in fact and appearance. Public confidence is at risk whenever a municipal court administrator is married to a police officer. The court recognizes, however, that its former directive should not be interpreted as barring an administrator, after appointment, from such a marriage since the personal consequences of such a prohibition may be excessively severe. Similar considerations permit the administrator to continue to serve when after appointment, his or her spouse, child, or parent becomes a police officer. None of those considerations, however, is sufficient to justify continuation of an administrator who is married to or living with the Chief of Police, regardless of how or when the relationship occurs. The damage done to public confidence is too extreme no matter what the personal circumstances may be.

EDITOR-S NOTE

The original directive labeled the Addendum as a NOTE and placed the text of that note in italics. The italics have been removed and the explanatory note has been labeled an addendum so as not to confuse it with these editorial notes.

This directive with its explanatory addendum replaces #10-88 which was rescinded by the Supreme Court after the U.S. Court of Appeals for the Third Circuit determined that the case of *Hughes v. Lipscher*, Civ. No. 89-5916 (3rd Cir. 1990), challenging job disqualification upon the marriage of a municipal administrator and a police officer, was a state court matter. See also, Canon 7D of the Code of Conduct for Judiciary Employees.