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OPINION COMMITTEE

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January 24, 2007

The Honorable Greg Abbott
Attorney General
State of Texas
PO Box 12548
Austin, TX 78711-2548

RQ-0565-GA

Request for Attorney General Opinion

Dear Mr. Attorney General:

Pursuant to section 402.042 of the Texas Government Code, I, Craig Watkins, the Criminal District Attorney of Dallas County, Texas, am writing to seek an opinion of the Attorney General.

Issues

Is there an appearance of impropriety, a conflict of interest or a violation of any law for a former judge to work as an assistant district attorney prosecuting cases where Child Protective Services has removed a child for abuse or neglect, when the date of such removal is subsequent to the former judge becoming a prosecutor, but the case is filed in the same court where the individual presided as judge and issued previous orders?

Is there an appearance of impropriety, a conflict of interest or a violation of any law for a former judge to work as a prosecutor in the same county where she sat as a judge, considering the fact that in her capacity as judge she appointed and paid attorneys from the general fund of Dallas County, and now, in the capacity of prosecutor, she has certain cases where opposing counsel was previously appointed and so paid by the former judge (now prosecutor) in other matters?

Statement of Relevant Facts

Brenda Green served as the judge of the 256th District Court in Dallas County for the eleven years prior to December 31, 2006. On January 1, 2007, Ms. Green was hired as an assistant district attorney for Dallas County. The 256th District Court hears all types of family law matters, including cases where Child Protective Services (hereinafter "CPS") has removed a child from the home for abuse or neglect. The CPS cases that are filed in the 256th District Court are so filed because that Court has continuing, exclusive jurisdiction over the child(ren) subject to the suit as a result of a previous final decree issued by that Court. There are six other family courts where CPS cases are filed in the same fashion. Many of the cases filed in the 256th District Court prior to December 31,

2006 were heard by (then) Judge Brenda Green; others were heard by an associate judge and merely required Judge Green's signature on the order.

While a judge, Ms. Green appointed and paid attorneys out of the general fund of Dallas County in such cases. In her current position at the District Attorney's Office, Ms. Green is to prosecute CPS cases and to supervise three other attorneys who handle the same types of cases. Ms. Green is currently assigned on cases where opposing counsel is someone who, as judge, she appointed and paid on other matters.

Pursuant to Tex. Disciplinary R. Prof. Conduct Rule 1.11, this office has taken what we believe to be the necessary steps to avoid the appearance of impropriety, a conflict of interest or a violation of any law. Brenda Green will not handle any case filed in the 256th District Court, nor handle any case filed in another court that is related (by having a common parent) to a case in the 256th District Court. The prosecutors under Ms. Green's supervision are not to consult with Ms. Green on any of the above mentioned cases, nor may they discuss those cases in the presence of Ms. Green. Furthermore, we are sending written notice to the parties on those cases pursuant to § Tex. Disciplinary R. Prof. Conduct Rule 1.11 (c) (2).

Sub-Issues

Are the steps that have been taken sufficient to avoid the appearance of impropriety, a conflict of interest or a violation of any law, or are further steps required?

Under what circumstances, if any, may Ms. Green consult with and/or advise the other attorneys that she is currently supervising as it relates to cases filed in or related to (by common parent) a case filed in the 256th District Court?

Tex. Disciplinary R. Prof. Conduct Rule 1.11 would prohibit Ms. Green from consulting or advising other attorneys on those cases that were pending in the 256th District Court as of December 31, 2006. It is important to note, however, that it is anticipated that in the future, CPS cases will be filed in the 256th District Court, and they may be filed in a pre-existing cause number based on a prior order signed by Brenda Green in her capacity as judge. May Ms. Green prosecute those cases and/or consult with the prosecutors who will be assigned those cases, or must she be screened from those cases as well?

It is also anticipated that at some future time CPS cases will be filed in the 256th District Court based on an order issued by the current judge of the 256th District Court. If Ms. Green cannot prosecute CPS cases that originate in the 256th District Court based on an order entered by her prior to January 1, 2007, may she handle similar cases filed based on an order entered by the current judge of that court subsequent to January 1, 2007?

We have an urgent need to have the Attorney General's opinion on these issues.

Thank you in advance for your assistance.


Sincerely submitted,
Craig Watkins