

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

Executive Order 93-12

An IURC Commissioner sought advice on whether she needed to disqualify herself from proceedings involving a long-distance telephone service provider which employed her son as a customer service representative. SEC found it was unnecessary for the Commissioner to disqualify herself from such proceedings since her son's interest would not be substantially affected by the outcome of a proceeding in Indiana.

**94-I-10, Indiana Utility Regulatory Commission's Executive Order 93-12
(Decision August 18, 1994)**

FACT SITUATION

One of the five Commissioners of the Indiana Utility Regulatory Commission (IURC) wanted the State Ethics Commission to determine whether she had a conflict of interest or the situation would influence her judgment in the performance of her duties if her adult son was employed in another state by a long-distance telephone service provider which also operated in the state of Indiana and was regulated by the IURC when the son was working as a customer service representative for the telephone company. Her adult son had recently accepted the employment.

The criminal and civil conflict of interest laws did not construe an adult child's employment to be a financial interest of the employee; thus, there was no problem with this situation under these ethics laws. However, the IURC asked the State Ethics Commission to interpret its own rules found in Executive Order 93-12.

Indiana Utility Regulatory Commissioners were appointed by the Governor to four-year terms to oversee the regulation of Indiana electric, gas, telephone, water, and sewer utilities. The IURC acted as a factfinding body hearing evidence on utility cases involving rate or financing requests, approval of a utility's rules and regulations, and changes in utility boundaries or service territories.

The IURC Commissioner's son was fluent in Portuguese and his job was to interpret company accounts calling from South America, particularly Brazil, where Portuguese was the national language. He picked the job not because it was a telephone company but because he wanted to utilize his Portuguese. Specifically, he helped Portuguese-speaking customers who wanted to disconnect service or change service. He had no contact whatsoever with the long-distance carrier's regulatory activities or regulatory employees. In fact, the company had a policy discouraging employees from having contact with state regulatory commissions. The customer service representative position was a regular salary position.

The IURC handled customer complaints by routing them to the IURC's Consumer Affairs Division. The Division made an informal recommendation that required the approval of three of the five Commissioners. If the customer did not believe the recommendation was correct, the customer made an appeal to the full Commission. In the past six years, only two appeals had reached a formal Commission conference meeting. Since the IURC Commissioner's son was in another state, it would be rare that any calls to Indiana would come from customers of that state. The Consumer Affairs Division of the IURC had contacts within each of the phone company providers which they called when a customer had a complaint. The person the Division would call at this company for any Indiana customer complaint would be wholly unconnected to anything the IURC Commissioner's son would do.

The Commissioner said that if something would come up that would involve her son, she would simply disqualify herself from that issue.

QUESTION

Under the Indiana Utility Regulatory Commission's Executive Order 93-12, did an IURC Commissioner need to disqualify herself in proceedings before the Commission involving a long-distance telephone service provider which employed her son as a customer service representative in another state and was regulated by the IURC?

OPINION

Under Executive Order 93-12, the State Ethics Commission found that the IURC Commissioner did not need to disqualify herself in proceedings before the IURC involving a long-distance service provider which employed her son as a customer service representative in another state due to the determination that her impartiality could not reasonably be questioned in this situation because the son's interest would not be substantially affected by the outcome of a proceeding in Indiana.

The relevant sections of the Executive Order 93-12 are as follows:

"Section 2. The Commissioners shall avoid impropriety and the appearance of impropriety in all of their activities.

B. Commissioners shall not allow their family, social, or business relationships to influence their conduct or judgment. They shall not lend the prestige of their office to advance the private interest of others; nor shall they convey or permit others to convey the impression that any person is in a special position to influence Commissioners.

"Section 3. Commissioners shall perform the duties of their office impartially and diligently.

C. Disqualification

(1) A Commissioner shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned including but not limited to instances where:

(d) The Commissioner or his or her spouse or a person within the third degree of relationship to either of them, or the spouse of such a person:

(iii) is known by the Commissioner to have an interest other than that of other members of the ratepaying public similarly situated that could be substantially affected by the outcome of the proceeding.

D. Remittal of Disqualification

(1) A Commissioner disqualified by the terms of Section 3C, except for Section 3C(1)(c), may, instead of withdrawing from the proceeding, disclose on the record the basis of disqualification. If, based on such disclosure, all of the parties independently of the Commissioner's participation agree in writing that the Commissioner's relationship is immaterial or that the reason for disqualification is inconsequential, the Commissioner is no longer disqualified, and may participate in the proceeding. The agreement signed by all parties or their representatives shall be incorporated in the record of the proceeding."