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 Consequently, the analysis reflected in the opinion may be outdated.

Conflict of interest

Executive Order

The husband of an IURC Commissioner was a partner in a law firm that did not practice before the IURC but did represent a publishing subsidiary of a regional telephone company. SEC found that this arrangement did not create a financial interest so long as the Commissioner's husband was not compensated from those same matters and the Commissioner followed the remittal procedure outlined in the IURC Executive Order.

96-I-9 Conflict of Interest and the Indiana Utility Regulatory Commission's Statute and Executive Order on Conflict of Interest

(Decision August 22, 1996)

Fact Situation

A Commissioner of the Indiana Utility Regulatory Commission (IURC) was married to a partner in a law firm. Her husband did not practice before the IURC, but he did represent a publishing subsidiary of a regional telephone company in court proceedings. The first question was whether the Commissioner should recuse herself in all proceedings involving the regional telephone company, use the disclosure mechanism contained in the Executive Order or neither. The second question was whether the Commissioner should recuse herself, use the disclosure mechanism, or neither in proceedings in which the law firm where her husband was a partner represented a party.

The Commissioner had recently been appointed to the IURC. The IURC regulated the rates charged by electric, steam, water, gas, telephone (but not for certain telephone services), and rural and privately owned sewage disposal utilities and the intrastate transportation of natural gas and related pipe-line facilities and operations. It also reviewed the issuance of securities of municipally-owned utilities and the assignment of service territories for regulated utilities. The IURC acted as an impartial, fact-finding body. Its goal was to balance the interest of the consumer in preventing utility rates from becoming unreasonably high or discriminatory with the interest of the utility in charging rates that covered their operating expenses and capital costs, while enabling their shareholders to recover a reasonable return on their investment. Commissioners devoted full time to their duties.

All five IURC Commissioners needed to fully participate in IURC matters because, besides hearing cases where a party or parties would request specific relief, the IURC initiated investigations, some of which lasted longer than two years and involved all utility competitors in an area.

The IURC did not ordinarily approve attorney fees for a case before it, and the outcome of the case did not determine the fee the case generated. Attorneys who practiced utility law generally billed hourly rates. A partner in a law firm where other attorneys represented clients before the IURC received a partnership share from the fees generated.

In response to a direct question, the Commissioner said her husband would be willing to forego any partnership compensation with respect to fees generated from work by his firm before the IURC.

The firm of the Commissioner's husband represented two clients at the time in a very large telecommunications matter before the IURC. Such cases represented a small percentage of the IURC case load. The firm was estimated to have represented these clients for about one year at the time.

In regard to the husband's representation of the regional telephone company's publishing subsidiary, her husband was paid an hourly rate to represent it in errors and omissions litigation in court. Such litigation occurred when a business filed a lawsuit claiming it was damaged by reason of alleged errors or omissions in their advertising in the business listings directories. There were two subsidiaries of the regional telephone company in Indiana, one an Indiana corporation, and the other a Delaware corporation. The former was regulated by the IURC, and attorneys frequently appeared before the IURC representing it. A different law firm represented the other subsidiary. Each subsidiary had its own board and corporate officers.

Question

Is a Commissioner of the IURC, married to a partner in a law firm who does not practice before the IURC but who does represent a publishing subsidiary of a regional telephone company, obligated to recuse herself in all proceedings involving the regional telephone company, use the disclosure mechanism in the Executive Order, or neither and obligated to recuse herself if the law firm where her husband is a partner represents a party, use the disclosure mechanism or neither?

Opinion

The Commission found that representation of the publishing subsidiary of the regional telephone company in a court by the Commissioner's spouse did not create a financial interest in a case before the IURC involving the Indiana subsidiary and that the Commissioner did not have a financial interest in matters before the IURC by her husband's law firm as long as her husband received no compensation or partnership share from those same matters, she followed the remittal procedure set forth in the IURC Executive Order, and all the parties involved agreed to the remittal of disqualification.