

Maryland Judicial Ethics Committee

Opinion Request Number: 1977-03

Date of Issue: June 16, 1977

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Recusal Not Required in Case Involving Law Firm in Which Judge's Son Is Salaried Associate

You have advised the Committee that a case now pending before you is being tried primarily by house counsel but that the appearance of an attorney, who is a senior partner in a law firm in which your son is an associate, has been entered as local counsel. Your son is not involved in any way with this case and is paid on a straight salary basis. Your question is whether, under these circumstances, you must disqualify yourself from the case. Also, you wish to know if you must disqualify yourself in all cases in which your son's firm participates if he should become a partner.

Canon XIII of the Canons of Judicial Ethics provides that "[a] judge should not act in a controversy in which a near relative is a party, witness or lawyer." Rule 2 of the Maryland Rules of Judicial Ethics forbids a judge from acting in a controversy in which a near relative is a lawyer. In [Opinion Request No. 1971-02 (unpublished)], we concluded that Canon XIII and Rule 2 prohibited a judge from acting on any matter, including the signing of routine orders, in a case in which a near relative participates as an attorney. However, in [Opinion Request No. 1974-08], the Committee noted that a judge is not automatically disqualified from sitting in a case merely because members or associates of a firm with which a near relative is affiliated are attorneys in the case. [Opinion Request No. 1974-08] set forth the following standard for disqualification to be applied where the near relative is not actually involved in the case although members of his firm are: "disqualification might be required only under circumstances where ... [the judge's] impartiality might reasonably be questioned or where ... [it is known] that ... [the relative's] interest in the firm could be substantially affected by the outcome of the proceeding."

In the instant case, there is no indication in the facts set forth that your impartiality might reasonably be questioned or that your son's interest in the firm will be affected in any way by the outcome of this case. Therefore, under this standard, disqualification is not required.

You also ask whether disqualification would always be required if your son should become a partner in the firm. Although as a practical matter a partner's interest in a firm may more likely be affected by the outcome of a particular case, even though the partner is not actively involved in the case, than is an associate's, the standard set forth in [Opinion Request No. 1974-08] does not make disqualification depend upon the relative's status in the law firm. It may be that in a particular case, because of the fee arrangement, or the method of compensating those affiliated with the firm, or other factors, both associates and partners could derive substantial benefit from the case. On the other hand, the fee agreement and the arrangements among attorneys in a firm may be such that neither partners nor associates, who are not actually involved with the case, will derive benefit from it. Whether or not disqualification is required will depend upon the facts and circumstances of each particular case. Therefore, a judge is not automatically disqualified under Canon XIII and Rule 2 in a case where members of a firm in which a near relative is a partner appear as counsel unless, in light of the facts coming to the judge's attention, the judge's

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“impartiality might reasonably be questioned” or the relative’s “interest in the firm could be substantially affected by the outcome of the proceeding.”