

Maryland Judicial Ethics Committee

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Judge Not to Hear Cases Involving Attorney-nephews of Spouse or Which Could Substantially Affect Nephew's Interest in Law Firm

We are advised that X is about to be appointed an Assistant State's Attorney for ___ County and that X and his brother, Y, who is associated with the firm of A & B, are nephews of [your spouse]. The problem is whether either of the Messrs. X & Y can appear before you. Canon XIII of the Maryland Canons of Judicial Ethics provides that "A judge should not act in a controversy where a near relative is a party or lawyer; ..." Rule 2 of the Maryland Rules of Judicial Ethics provides:

"A judge shall not exercise his duties with respect to any matter in which a near relative by blood or marriage is a party, has an interest, or appears as a lawyer ... For the purpose of this Rule, 'near relative' shall mean connection by consanguinity or affinity within the third degree, counting down from a common ancestor to the more remote."

The Code of Judicial Conduct promulgated by the American Bar Association, Canon 3C(1) provides that a judge shall disqualify himself in a proceeding in which he or his spouse or a person within the third degree of relationship to either of them is a party or acting as a lawyer. There is a further provision in Canon 3C(3) that the degree of relationship is to be calculated according to the civil law system.

In an opinion which we released in September 1971, [Opinion Request No. 1971-02 (unpublished)] we concluded that Canon XIII and Rule 2 did not prohibit a judge from sitting in a case which was being tried by an Assistant State's Attorney simply because the judge's son was a State's Attorney for the County in question, so long as the State's Attorney took no part in the actual prosecution of the case, if the case was not one of more than usual public interest in which the State's Attorney played some role prior to the actual trial.

Since X is within the degree of relationship proscribed by both the Maryland Rule and the ABA Canon, it is our opinion that it will be necessary for you to disqualify yourself in any case in which he would otherwise appear before you and disqualification would be similarly required in any case in which Y would otherwise have appeared.

The association of Y with the firm of A & B will not necessarily require your disqualification in cases in which the members of that firm or other associates appear. The Comment to ABA Canon 3C(1) would seem to indicate that disqualification might be required only under circumstances where your impartiality might reasonably be questioned or where you know that [your spouse's] nephew's interest in the firm could be substantially affected by the outcome of the proceeding.

While the ABA Canons have not been adopted in Maryland, they are usually regarded as setting up standards of which the members of the judiciary should be mindful. In this connection, see Committee note to Maryland Ethics Rule 2.