

Maryland Judicial Ethics Committee

Opinion Request Number: 1977-01

Date of Issue: February 23, 1977

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Hear Case Involving Child as Witness on Undisputed or Formal Matters

By your letter of February 8, 1977, addressed to the Honorable John C. Eldridge, Chairman of this Committee, you have advised that, by special assignment, you are handling all matters in an estate being administered through the Orphans' Court for _____. It appears that various issues have been intensively litigated and that considerable controversy has arisen between the heirs and the personal representatives. Your letter indicated that a hearing was scheduled on exceptions filed by the heirs to the Fourth Account, such hearing to be held on February 10, 1977. Accordingly, pursuant to Rule 15, you sought an informal opinion of this Committee because you had learned that your son would be called as a witness, your son having been an Assistant United States Attorney who had "pushed a few papers around" in a matter conducted by the Justice Department relating to an issue involving the estate tax. You were informally advised that you should not automatically disqualify yourself for the above reason but should wait until a proffer of the testimony of your son was made at the hearing, in which case you could then decide the question of your disqualification. This opinion is to confirm the advice informally given to you.

Canon XIII of the Canons and Rules of Judicial Ethics provides as follows:

"A judge should not act in a controversy in which a near relative is a party, witness, or lawyer; he should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position, or influence of any party or other person. He should not testify voluntarily as a character witness."

Rule 2 provides:

"2. 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. He shall not participate in any matter in which he has a significant financial interest or in which he previously acted 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."

It should be noted that the above Rule flatly prohibits the exercise by a judge of 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". The Canon, however, is a standard prohibiting a judge from acting "in a controversy in which a near relative is party, witness, or lawyer;". (Emphasis supplied) The absence of the word, "witness", from the Rule is an indication that, as to merely formal matters, there would be no violation of the Canon or Rule where a near relative is only a witness to such undisputed or formal issues. He would not, in such instance, be acting "in a controversy" against the prohibition of Canon XIII. For instance, the fact that a near relative is a witness to a Will would not seem to prohibit a judge from presiding in a matter where the execution of the Will is not in dispute.

Maryland Judicial Ethics Committee

Opinion Request Number: 1977-01

Date of Issue: February 23, 1977

Published Opinion Unpublished Opinion Unpublished Letter of Advice
Page 2 of 2

Analogies to your question may be found in [Opinion Request No. 1971-02 (unpublished)] stating that the above Canon and Rule do not prevent the appearance of an Assistant State's Attorney in a routine criminal action before a judge who is related to the State's Attorney.

Another is [Opinion Request No. 1974-08] ruling that a judge is not necessarily disqualified in hearing matters where the law firm of his wife's nephew is involved, where other members or associates appear, "unless the case involves circumstances where the judge's impartiality might reasonably be questioned or where the judge knows that his wife's nephew's interest in the firm could be substantially affected by the outcome of the proceeding."

Upon a due proffer of the testimony of your son at the hearing, you will then be in a position to judge whether such testimony would require your disqualification. The mere fact of his appearance as a witness does not disqualify you.