

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 1977-12

**Date of Issue:** December 20, 1977

**O** Published Opinion    **G** Unpublished Opinion    **G** Unpublished Letter of Advice

### Judge Not to Serve as Legal Evaluator of Research Projects for Hospital

In your letter of November 11, 1977, you have asked an Opinion concerning your acceptance of membership of the Research Committee of X Hospital, the formation of such Committee being required of all United States hospitals by directive of the Department of Health, Education and Welfare. You have been advised that the Committee will consist of five physicians, a nurse and three non-medical persons and it is anticipated that these three positions will be occupied by a theologian, a member of the general public and a member of the legal sector. Specifically, the function of the Committee will be,

“To evaluate and approve or disapprove research type projects introduced by individuals or groups of physicians, nurses or paramedical persons. These evaluations will be done with primary concern for the safety and privacy of the patients and the Committee in mind. The protection of the hospital and the Medical Staff should be considered also.” (Emphasis supplied)

You have been asked to take a position on the Committee as a member of the legal sector and in the letter seeking your acceptance your duties will be,

“Just as the theologian will evaluate these more from the moral aspect, I would expect the legal person, obviously you, to evaluate them from a legal perspective. He would not be called upon to offer a legal opinion, but may indicate the need for one from the hospital or Medical Staff counsel.”

In further outlining the prospective duties of the Committee, it is stated that “research proposals will be few in number, and mostly will consist of interviewing patients, researching medical records, etc. Occasionally someone may request to use a drug, not yet released by the FDA.”

In [Opinion Request No. 1977-09] of this Committee dated November [30], 1977, we reviewed prior opinions on questions relating to the problem posed by you and we there pointed out our previous holding in [Opinion Request No. 1975-09] dated October 3, 1975, that there is “no prohibition against a judge participating in the activities of educational, religious and charitable institutions,” subject, however, to several restrictions one of which is any suggestion that “the power or prestige of his office is being utilized to persuade others to support an institution with which he is connected.” See Canon XXIV and Rules 6 and 9.

In addition, Canon XXX and Rule 5 prohibit a judge from practicing law.

While it is true that you are not to be asked specifically to give legal advice, you will be expected to evaluate problems from a legal perspective and this would require you to familiarize yourself with many research activities and usages of proposed new drugs that may well result in malpractice suits against the hospital, its staff, or, conceivably, its Research Committee. Moreover, one of your duties will be evaluations from a legal perspective of the steps necessary for the protection of the hospital and its Medical Staff. The hospital and its staff obviously will place some

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reliance on the recommendations of the Committee, which will include your legal evaluation.

All of this might require your disqualification in subsequent suits that may be brought and, while most malpractice suits are brought initially in the Circuit Courts, and not the District Court, you are, of course, subject to being assigned to such courts. Obviously, also, there would appear, particularly to a non-lawyer, little distinction between a legal evaluation and a legal opinion.

In view of the foregoing, we believe that your work on this proposed Committee may well interfere with your duties as a judge or, at the very least, give the appearance to the public and to the hospital and its staff of such interference and we believe it would be improper for you to accept this membership.