

Maryland Judicial Ethics Committee

Opinion Request Number: 1981-01

Date of Issue: March 2, 1981

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Accept Invitations to Bar Association Functions With or Without Paying;
May Not Hear Case Involving Brother's Wife
But Not Absolutely Disqualified in Case Involving Father of Brother's Wife

A judge has asked whether or not it is permissible for him to accept dinner dance invitations from either his own county bar association, a bar association of a neighboring county or the X Bar Association.

Clearly, the mere fact of attendance at such functions is not proscribed by any Canon or Rule. Canon XXXII specifically provides that a judge "... should not discontinue his interest in or appearance at meetings of members of the bar."

If the invitation requires no payment, it is the opinion of the Committee that the acceptance of such invitation does not violate either Canon XXXI or Rule 7. Where a bar association extends such an invitation, no individual lawyer or group of lawyers within the bar association possibly could be seeking to achieve any special favor or position with the judge. Interaction between the judiciary and the bar associations is to be encouraged and that is the obvious reason such invitations traditionally have been extend for many years.

Second, the judge asked the Committee whether he must disqualify himself from cases involving the father of his brother's wife or from cases involving his brother's wife.

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 of the Rules of Judicial Ethics provides in part as follows:

"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."

See also, Maryland Constitution, Article IV, Sec. 7.

It is the opinion of the Committee that the wife of the judge's brother clearly is within the degree of relationship proscribed by Rule 2, and that the judge must disqualify himself from any proceeding in which such relative is a party, attorney or has an interest.

The father of the brother's wife presents another problem. The answer appears to be found in an adage quoted in Cortez vs. State, 161 S.W. 2d 495:

"The groom and bride each come within,

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The circle of each other's kin,
But kin and kin are still no more
Related than they were before."

See also, 46 Am Jur 2d, Sec. 141, where it is stated:

"For example, a brother of the husband and a brother of the wife are not affines, and therefore, while a judge is disqualified in a case to which his sister-in-law (brother's wife) is a party, he is not disqualified because a brother of his sister-in-law is a litigant."

Likewise, it is the opinion of this Committee that a judge would not be absolutely disqualified by Rule 2 because the father of his sister-in-law is a litigant. However, see the Committee Note to Rule 2 in which it is pointed out that in many lesser situations "... the judge's own sense of propriety may indicate that he disqualify himself. There may also be even lesser situations in which the judge will determine that full disclosure to counsel is adequate."