

JEAC 1997-3
September 23, 1997

You have requested an advisory opinion as to the proper judicial conduct in the following situation, as described in your letter of August 27, 1997:

My [adult child], who resides at home, has been receiving ongoing medical treatment and counseling from a professional association in [...]. [My child] is presently seeing two of the professionals in that association. The length and extent of...treatment is not known at this time but is expected to continue for several months. My situation is that at times, not only do those two treating professionals appear before me as expert witnesses, but also other members of that association. Additionally, one of the members of that association has a matter pending in this Court as a party. Sitting as the trier-in-fact, am I prohibited from sitting on those matters which come before me involving the present treating professionals and other members of their association.

Disqualification is governed by Canon 3C. Your situation does not fall within any of the specific instances described in the Canon where disqualification is required. The standard for determining whether you should disqualify yourself is whether your impartiality might reasonably be questioned.

We believe that your impartiality might reasonably be questioned with respect to those members of the association who are treating your [child]. If you are satisfied that you could be impartial, you may follow the procedure for remittal of disqualification provided in Canon 3D. On the other hand, if you doubt your ability to be impartial, or if you do not want to disclose the basis of your disqualification, you should simply disqualify yourself, without disclosing the reason.

We believe that your impartiality could not reasonably be questioned with respect to other members of the association, except in unusual circumstances. There would normally be no reason to doubt your impartiality when those members appear as a witness or a party. Assuming that you have no scruples about your ability to be impartial, you need not disqualify yourself.

FOR THE COMMITTEE:
BERNARD BALICK, Chair