

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 96-03
(March 12, 1996)

**Exception to Disqualification Rule in Cases Where
a Judicial Colleague Is a Litigant**

Issue

May a superior court judge review and approve an annual report of a guardian when the guardian is also a judge of the superior court in the same county?

Answer: Yes, if the matter is uncontested, routine, and involves no extraordinary requests or expenditures.

Facts

A judge submits annual reports as guardian for his disabled stepson. The ward's estate consists of income from social security payments and from sheltered work. Most of his expenses are room and board charged by the Arizona Department of Economic Security.

Guardianship is regulated by statute. The powers and duties of guardians are described in A.R.S. § 14-312. Guardians must make annual reports to the court. A.R.S. § 14-5315. They *may* be compensated, and compensation is fixed by the court. A.R.S. § 14-5314. The court may also remove a guardian upon petition. A.R.S. § 14-5307.

Discussion

In Opinion 90-09, this committee concluded that a judge or commissioner of the superior court could not ethically preside over a case in which a colleague of the same court is a private litigant. The opinion sets forth eight examples in which disqualification would apply. The issue here is whether Opinion 90-09 would be applicable to the circumstances presented. The answer is, no.

In each of the examples described in Opinion 90-09 the judge or commissioner or family member or business interest is a litigant in a lawsuit or charged with a criminal offense. In such circumstances, this committee is of the opinion that Canon 3C(1)(a), now Canon 3E(1)(a) in the 1993 Code of Judicial Conduct, requires disqualification due to either a conflict of interest or any situation in which the judge's impartiality might reasonably be questioned.

Upon further reflection, we do not believe that Opinion 90-09 should be viewed as a bright-line rule that requires the disqualification of every judge and commissioner in the county whenever a judge, commissioner or family member is involved in a legal matter. Disqual-

Advisory Opinion 96-03

ification depends on the circumstances and is required whenever there is an actual conflict of interest or one that would be *reasonably* perceived as such by the public.

The circumstances of the present inquiry do not present a conflict of interest or a situation that would reasonably raise a question of impropriety. In this case the judge is the guardian of a family member who is disabled. The guardianship estate is small, consisting of only social security and monies earned in sheltered employment. There is no request for compensation or extraordinary expenditures. The report of the guardian is for the purpose of satisfying the administrative requirements of the statute. It is routine in nature, and the local judge or commissioner can handle the matter.

In summary, an uncontested, routine administrative report to the court by a judge who is the guardian of a family member with a small, uncomplicated estate is not a matter which requires the disqualification of every superior court judge and commissioner within the same county for purposes of review and approval in accordance with the statutes. We note, however, that even though disqualification under these circumstances is not required, if either the guardian or the judicial officer remains uncomfortable with the situation, an assignment to a judicial officer outside the county would be appropriate.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2 and 4 (1993).

Other References

Arizona Judicial Ethics Advisory Committee, Opinion [90-09](#) (revised July 12, 1991).