

## Judicial Inquiry Commission

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June 27, 1997

The Judicial Inquiry Commission has considered your request for an advisory opinion regarding the judge's power to appoint as guardian ad litem an attorney who is related to the judge within the fourth degree of blood or marriage where the attorney is nominated by a minor and whether, if a basis for recusal arises, the minor or the guardian ad litem may remit the disqualification.

It is the opinion of the Commission that the judge may not appoint as guardian ad litem an attorney who is nominated by a minor and who is related within the fourth degree by blood or marriage to the judge nor may the judge accept a remittal of disqualification in this instance.

Canon 3B(4) provides, in part, "A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism." In Advisory Opinion 85-234, the Commission applying Canon 3C, concluded that a probate judge is prohibited from appointing his or her attorney-son or -daughter to serve as guardian ad litem in matters pending before the probate court in that court's judicial capacity. The Commission cited advisory opinions prohibiting the appointment of relatives within the prohibited degree as attorneys in indigent criminal cases on the ground that such an appointment might create an appearance of impropriety under Canon 3C(l). In the Commission's view, the limitation on nepotism-based appointments under appointment power should be read consistently with Canons 3C(l) and 3C(l)(d).

Assuming that, as a result of a nomination or appointment of a person within the prohibited degree as guardian ad litem by a party with the necessary power, an attorney within the prohibited degree appears before the judge, the judge's recusal obligation and the related remittal are governed by Canon 3D and prudential considerations. In an adversary proceeding, the parties may ordinarily remit the disqualification by following the procedure laid out in Canon 3D. The same is not true of the proceeding in question here because the attorney relative stands in place of the real party in interest.