

Hon. James J. Wechsler, Co-Chair (ret.)
Hon. Kristina Bogardus, Co-Chair
Paul L. Biderman, Esq.
Hon. Freddie Romero
Hon. Yvette Gonzales

October 1, 2024

AO 24-03

Dear Judge

You have asked the Advisory Committee on the Code of Judicial Conduct whether you are disqualified from child custody cases in which your wife or her clinic is identified as the medical provider for a child in the proceeding.

You have informed the Committee that your wife is employed by a pediatric clinic. She is the only pediatric specialist in the county in which your court is located. Under her employment contract, she receives an annual salary, bonuses based on quarterly billing, and a share of annual profit sharing.

You routinely receive parenting plans submitted in child custody cases that identify your wife or her clinic as the current or status quo medical provider of the child or children. When entering a final decree, you are required to adopt a parenting plan and order the parties to comply with its terms, including maintaining, if appropriate, the status quo. Neither party can alter the status quo of the parenting plan unless both parties agree to the change or as ordered by the court.

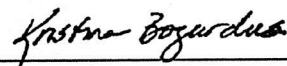
The Code of Judicial Conduct requires a judge to disqualify himself or herself “in any proceeding in which the judge’s impartiality might reasonably be questioned,” including circumstances in which the judge’s spouse has “more than a de minimis interest that could be substantially affected by the proceeding” or “an economic interest in the subject matter in controversy[.]” Rule 21-211(A)(2)(c), (3).

First addressing the latter circumstance, the identification of your wife or her clinic as the medical provider for a child and asking the court to approve the parenting plan does not create any controversy concerning the parenting plan. The parties agree that your wife or her clinic is the status quo for the child. When you approve and order compliance with the parenting plan, you are

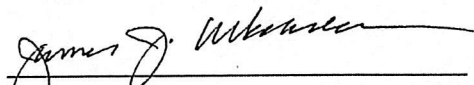
enforcing the agreement of the parties; there is no subject matter in controversy. Moreover, the parties may change medical providers by agreement. If they do not agree, they may petition the court for a change. In that event, or if the parties do not agree as to the medical provider prior to the approval of the parenting plan, a controversy would exist requiring disqualification.

The former circumstance requires disqualification if a judge's spouse "has more than a de minimis interest that could be substantially affected by the proceeding." Rule 21-211(A)(2)(c). Your wife's economic interest in continuing to serve her patients is significant, not de minimis. However, unless a party raises an issue concerning the identification of your wife or her clinic as a medical provider, the identification only requires a perfunctory action by the court approving the status quo. Unless an issue is raised, any effect on your wife's economic interest is merely hypothetical. The Committee does not believe that your "impartiality might reasonably be questioned" under such circumstances. Rule 21-211(A). Of course, if the parties no longer agree and an issue is raised concerning your wife or her clinic serving as medical provider, you are then disqualified from the case.

Although you are not disqualified from the cases based on the parties' agreement, the Committee believes, for the benefit of the parties, that when they submit a parenting plan identifying your wife or her clinic as the status quo medical provider, you should disclose your relationship and provide the parties the opportunity to move for your disqualification.



Kristina Bogardus
Co-Chair



James J. Wechsler
Co-Chair