

Maryland Judicial Ethics Committee

Opinion Request Number: 1977-10

Date of Issue: December 7, 1977

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge Not to Serve as Personal Representative of Estate of or Guardian for Nonrelative

You have asked for an advisory opinion from the Judicial Ethics Committee as to the propriety of your serving as Personal Representative, Trustee and Guardian of the X Estates.

We are informed in your letter that for many years you represented Mr. and Mrs. X, the parents in law of one of your brothers. You advise that Mr. X died on April 22, 1976, you qualified as Personal Representative of the estate and filed a First Administration Account which was approved on May 5, 1977. Distribution of the estate was made to Y Trust Company and yourself, Trustees. You stated that a refund is expected from I.R.S. which will necessitate the filing of a Second Administrative Account. On December 13, 1976, by Decree of the Circuit Court for Z County you were appointed Guardian of the property of Mrs. X, a disabled person. Mrs. X is a resident of Z County, Maryland and the proceedings were brought by her two children who live in Z County, Maryland, and _____, Ohio, respectively.

You inquire whether it is proper for you:

- (1) To prepare and file a Second Administration Account as Personal Representative of the estate of Mr. X.
- (2) To continue to serve as testamentary Trustee under Mr. X's Will.
- (3) To continue to serve as Guardian of the property of Mrs. X.

Maryland Canon XXVI provides:

“While a Judge is not absolutely disqualified from holding a fiduciary position, he should not accept or continue to hold any such position if the holding of it would interfere or seem to interfere with the proper performance of his judicial duties, or if the business interests of those represented require investments and enterprises that are apt to come before him judicially, or to be involved in questions of law to be determined by him.”

Since you are a resident judge of A County and the X Estates are being administered in Z County, there is little likelihood in the circumstances which you have described, that your continuing to serve as Personal Representative, Trustee and Guardian would interfere with the proper performance of your judicial duties, or that matters involving the estates would be likely to come before you.

However, Maryland Code (1974) Estates and Trusts Article, § 5-105(5)* provides, in effect, that letters testamentary may not be granted to a full time judge of a court established under the laws of Maryland, unless he is a surviving spouse or is related to the decedent within the third degree.

Estates and Trusts Article, § 14-104 provides that a judge of any court established under the laws of this State, unless he is the surviving spouse of the grantor of the trust, or is related to the grantor within

* As of the editing date [July 10, 2006], Maryland Code, Estates and Trusts Article, § 5-105(b)(5).

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Page 2 of 2

the third degree, may not serve as a Trustee of any inter vivos or testamentary trust created by an instrument and executed in Maryland by the grantor or any trustee, administered in the State, or governed by the laws of the State, unless he was actually serving as the Trustee of the trust on December 31, 1969.

It is our opinion that while Maryland Canon XXVI may not be violated, the statutory law of Maryland prohibits you from continuing to serve as Personal Representative, Trustee and Guardian in the X estates.