

Maryland Judicial Ethics Committee

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Orphans' Court Judge Not to Write Probate Bonds in Insurance Business

A chief judge of a county's Orphans' Court has requested the opinion of this Committee concerning a certain aspect of his private business activity. Specifically, the judge asks whether it is proper, as part of his insurance business, to perfect probate bonds when requested to do so by his insured clients. The judge suggests that any possible conflict of interest could be avoided by having another licensed agent in his office sign the bonds as attorney-in-fact.

A similar issue was raised in [Opinion Request No. 1977-08], dated October 21, 1977, in which the Committee found that it was not permissible for a judge of the Orphans' Court to participate as auctioneer in estate sales. It is the Committee's opinion that the rationale of [Opinion Request No. 1977-08] applies to the question presented here and that the judge of the Orphans' Court would be precluded from writing probate bonds for his insured customers under Canons IV and XXIV and Rule 9.

Section 6-102 of the Estates and Trust[s] Article gives the Orphans' Court the responsibility of setting bonds for personal representatives of decedents' estates. A judge of the Orphans' Court may also exercise his discretion to order additional bond other than the minimum required by statute. It is clear that the performance of these statutory duties in concert with the act of perfecting such bonds for paying clients may create the appearance of impropriety, which contravenes the proscription of Canon IV. Similarly, such activity conflicts with Rule 9 and Canon XXIV's mandate that a judge "avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute to the success of private business ventures." Canon XXIV specifically precludes a judge from "enter[ing] into such private business ... as would justify such suspicion."

The object of these and all the Canons and Rules is to hold the office of judge above suspicion or the appearance of abuse of power or prestige. The Committee concludes that these ethical concerns do not permit the judge of the Orphans' Court or another person acting in his name, to perfect probate bonds as part of his private business activity.