

Maryland Judicial Ethics Committee

Opinion Request Number: 1971-04

Date of Issue: December 14, 1971

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Serve as Personal Representative of Father's Estate;
May Not Serve as Director of Insurance Brokerage Firm

Our Committee has given careful consideration to the questions posed by your letter of October 28. It seems to us that there is no doubt about the propriety of your serving as a personal representative of your father's estate or as a trustee of the trust estate created by his will, since this is specifically permitted by Code, Article 93, § 5-104(b)(5) and Article 16, § 199A*. However, these provisions should be read in conjunction with Canon XXVI of the Maryland Canons of Judicial Ethics, which would seem to raise a question

“if the business interests of those represented require investments in enterprises that are apt to come before [the judge] judicially or to be involved in questions of law to be determined by him.”

Whether you can continue to serve as director of [an insurance brokerage business], or as a consultant and receive compensation in either capacity, poses a more difficult problem. While it is certainly arguable that the Maryland Canons of Judicial Ethics would not preclude your continuing a nonlegal relationship with your father's company, so long as the company was not a litigant in your court, the Maryland Rules are considerably more restrictive.

In our opinion, it is Rule 6 which is determinative of the matter. This Rule provides, in part:

“A full-time judge shall not hold any office or directorship in any public utility, bank, savings and loan association, lending institution, insurance company, or other business corporation or enterprise or venture which is affected with the public interest.”

We have concluded that the prohibition was not intended to be restricted to the types of business activity specifically identified but also extends to any other business activity sufficiently affected with the public interest to be the subject of governmental regulation.

While a corporation engaged in the insurance brokerage business is certainly not an “insurance company” as contemplated by Rule 6, insurance agents and brokers, including corporations and partnerships, are required to be licensed and are subject to extensive supervision and control under Code, Article 48A, §§ 165-179**. We are therefore of the opinion that [an insurance brokerage] is a “business corporation ... affected with the public interest” within the purview of Rule 6. It is our opinion that a judge is not permitted to be a director of such a corporation nor may he be employed by it in any other capacity.

* As of the editing date [July 10, 2006], Maryland Code, Estates and Trusts Article, § 5-105(b)(5) and § 14-104, respectively.

** As of the editing date [July 10, 2006], Maryland Code, Insurance Article, § 10-101 *et seq.*