

Maryland Judicial Ethics Committee

Opinion Request Number: 1975-04

Date of Issue: April 17, 1975

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judge May Be Unpaid Coexecutor of Will of Spouse's Uncle in Another State

You have advised us that you have been named as co-executor of the will of your uncle by marriage, who died domiciled in _____ County, West Virginia. You state that a West Virginia attorney will conduct the administration and that you will receive no compensation. You inquire whether the Maryland Canons and Rules of Judicial Conduct would prohibit your acting in this capacity.

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 in enterprises that are apt to come before him judicially or to be involved in questions of law to be determined by him."

Since there is no possibility, in the circumstances which you describe, that your qualification as co-executor would interfere with the proper performance of your judicial duties, or that matters involving the estate would be likely to come before you, the Canon imposes no bar.

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 or of the United States unless he is the surviving spouse of the decedent or related to the decedent within the third degree.

It may well be that the thrust of § 5-105(5)* is unclear, but we have always taken the position that the interpretation of statutes is not our function and it may be necessary for you to resolve the question whether the prohibition relates only to the qualification of a judge as personal representative in Maryland or extends to his qualification in another State.

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