

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 1976-01

**Date of Issue:** February 6, 1976

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

### Judge May Manage Affairs of Spouse's Cousin under Power of Attorney but Not Hold Legal Title to Assets

This letter is in response to your inquiry of January 8. You state that in 1972, Dr. and Mrs. X moved to [Maryland] from Florida, in order to be nearer to you and [your spouse], because of the fact that Mrs. X is [your spouse's] second cousin.

When Dr. X died recently, it was necessary to place Mrs. X in a nursing home in \_\_\_\_\_, since Mrs. X, who is 84, is too feeble and infirm to live alone. Mrs. X, who is a person of substantial means, has reached a point where she can no longer manage her affairs and has insisted that you act as her attorney in fact under a general power of attorney, since you are the only male member of her family in whom she has implicit confidence. You state that your duties would consist of collecting and investing her income; paying her expenses, and seeing that she is properly cared for. You ask whether it is proper for you to do this.

It is the opinion of a majority of this Committee that your acting as Mrs. X's attorney in fact is not the practice of law forbidden by Canon XXX of the Maryland Canons of Judicial Ethics provided that your performance of the duties imposed upon you do not interfere or appear to interfere with your official duties (Canon XXIII). You may want to remember that Code, Art. 16, § 199A\* which prohibits a judge from serving as a trustee, will preclude your holding legal title to the assets committed to your care, and that Canon 5D of the American Bar Association's Code of Judicial Conduct, which has not been formally adopted in Maryland, prohibits a judge from serving as executor, administrator, trustee, guardian or other fiduciary except for a member of his family, related to him by blood or a "person with whom the judge maintains a close familial relationship." We invite your attention, moreover, to that portion of Canon XXVI which might well require your disqualification in instances where investments held by Mrs. X or investments made by you in her behalf come before you judicially or involve questions of law to be decided by you.

You understand, I am sure, that the scope of this opinion is narrowly limited to the facts and circumstances described in your submission.

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\* As of the editing date [July 10, 2006], Maryland Code, Estates and Trusts Article, § 14-104.